FIL
DEC 18
MICHAEL RODAK,

APPENDIX

In the Supreme Court of the United States

No. 73-1531

ALBERT JOHNSON, ET AL., PETITIONERS,

v.

STATE OF MISSISSIPPI, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 12, 1974
CERTIORARI GRANTED OCTOBER 21, 1974

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DOCKET ENTRIES

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI WESTERN DIVISION

ALBERT JOHNSON, REVEREND EDDIE L. MCBRIDE, CHARLES CHIPLIN, DAVID MCPHELP, ROBERT WHITAKER LEE, JOHN FERGUSON, MICHAEL SIMS, TERRY ROBINSON, ROBERT WHITTAKER, JOHN DILLARD, ODELL DIXON, ISSAC REMBRANT, BETTY WASHINGTON, KATIE MAE CLARK LAWRENCE, CONNIE WILLIAMS, WILLIE GREEN, VICTOR PARSON, BENNIE YOUNG, BEN PERKINS, DANIEL WALTON, WALLACE WILLIAMS, MARY HELEN LEE, FANNIE BROWN, MILDRED C. COSEY, ALBERT ROSS, ALORA LARKINS, WILLIAM ROOKS, JOSEPH WRIGHT, MATTIE MAE JONES, LOUISE THOMAS, ROSA LEE SHIELDS, MAUDE WINFIELD, MARY F. ROBB, J. B. EDWARDS, JR., RAY M. COSBY, LARRY SIMS, BERTHA WILLIAMS, DELLORA BOSLY, WILLIE MAE FERGUSON, FRANKIE YOUNG, RUDY L. SMITH, JEANNETTE CANDA, WILLIE MAE JONES, ABRAHAM GREEN, JR., ROBERT M. JOHNSON, ALBERT JOHNSON, TOMMY WHITAKER, JOHNNIE WILLIAMS, RUFUS PRICE, AND JESSIE MAE GREEN,

Petitioners,

versus CR.A. 72 W-7(C)

STATE OF MISSISSIPPI; HONORABLE JAMES NICHOLS; COUNTY JUDGE, WARREN COUNTY,

MISSISSIPPI: HONORABLE OSCAR LABARRE, JUDGE OF THE CITY OF VICKSBURG, MISSISSIPPI: PAUL BARNETT, SHERIFF OF WARREN COUNTY; MARION R. BROWN, CHIEF OF POLICE OF THE CITY OF VICKSBURG, MISSISSIPPI,

Respondents.

DATE	PROCEEDINGS
5-25-72	Petition for Removal, with Verificate of James E. Winfield, Sworn Verificate of Albert Johnson, and Eddie L. McBridge, et al., copies of affidavits, filed with Notice of Removal.
5-25-72	ANSWER of State of Mississippi, et al to Petition for Removal, with Certificate of Service, filed.
5-25-72	Respondents' MOTION TO REMAND, with Certificate of Service and Notice of Motion for hearing on Friday, June 2, 1972, at 9:00 A.M. at Jackson, before Judge Harold Cox, filed.
5-25-72	Copy of Affidavit of George Chaney, County Prosecuting Attorney, filed.
6- 1-72	AMENDED Petition for Removal with Verificate, filed in duplicate.
6- 5-72	EXHIBITS: D-1 and D-2, filed. (see envelope)
12-29-72	OPINION . . . "A judgment accordingly may be entered . . .", filed. Copy of above opinion mailed attorneys Alexander, Ellis and Chaney. Certified copy of opinion mailed to County Court and Police Court by certified mail, return receipt requested.
1- 4-73	ORDER TO REMAND: Ordered that case of Albert Johnson be remanded to County Court of Warren County, Miss. and all other cases included remanded to the Municipal Court of

Vicksburg, Miss.; further ordered that Clerk furnish Clerk of said State Courts with attested or certified copy of this order. Petitioner assessed with cost, filed and entered O.B. 1973, Page 1. Certified copy of order mailed Clerks of State Courts certified mail, return receipts requested, and to attorneys of record by regular mail.

1-10-73 Return receipts on above mailing attached to Order to Remand.

2- 1-73 Petitioner's Notice of Appeal from remand order of this Court entered 1-4-73, to the Fifth Circuit Court of Appeals, filed.

2- 1-73 Petitioner's Motion for Stay of Remand Order pending appeal, with Certificate and notice of hearing at Jackson, Miss. on February 9, 1973, at 9:00 A.M., filed.

2- 2-73 Certified copy of Notice of Appeal and docket sheets and copy of Motion mailed Fifth Circuit and copy of Notice of Appeal mailed attorneys for respondents.

2- 1-73 Appeal Bond in the sum of $250.00 paid into registry.

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[12] ARREST AFFIDAVITS

THE STATE OF MISSISSIPPI,
City of Vicksburg

Personally appeared before me, the undersigned Police Justice and Ex-Officio Justice of the Peace of the City of Vicksburg, CHIEF MARION R. BROWN, CHIEF OF

POLICE, ON INFORMATION AND BELIEF who being duly sworn, deposeth and says that E. L. McBride, Charles Chiplin, David McPhelp, Robert Whittaker Lee, John Ferguson, Albert Johnson, Michael Sims, Terry Robinson, Robert Whittaker, John Dillard, Odell Dixon, Issac Rembrant, Betty Washington, Katie Mae Clark Lawrence, Connie Williams and Willie Green, Victor Parson.

On or before the 1st day of May, A.D., 1972 within the Corporate Limits of said City with the felonious intent on their part, and each of them to commit acts injurious to trade or commerce among the public and did wilfully, unlawfully, and feloniously conspire, combine confederate and agree among themselves and each of them with the other, and did enter into an unlawful conspiracy, plan and design among themselves, and each with the other, to unlawfully and feloniously bring about a boycott of merchants and businesses and pursuant of the said unlawful conspiracy did then and there promote, encourage and enforce acts injurious to trade or commerce among the public.

This in the County of Warren and State of Mississippi, and against the peace and dignity of the State of Mississippi the affiant verily believes.

Sworn to and subscribed before me this 2nd day of May, 1972

/s/ MARION R. BROWN

/s/ OSCAR LABARRE
Police Justice and
Ex-Officio Justice of
the Peace

[13] THE STATE OF MISSISSIPPI
CITY OF VICKSBURG

Personally appeared before me, the undersigned Police Justice and Ex-Officio Justice of the Peace of the City of Vicksburg, CHIEF MARION R. BROWN, CHIEF OF POLICE, ON INFORMATION AND BELIEF who being duly sworn, deposeth and says that Bennie Young, Ben Perkins, Daniel Walton, Wallace Williams, Mary Helen Lee, Fannie Brown, Mildred C. Cosey, Charles Chiplin, Victor Lee Parson, Odell Dixon on or about the 13th day of May A.D., 1972 within the Corporate Limits of said City with the felonious intent on the part of said defendants and each of them to commit acts injurious to trade or commerce among the public did wilfully, unlawfully, and feloniously conspire, combine, confederate and agree among themselves, and each of them with the other, and did enter into an unlawful conspiracy, plan and design among themselves, and each with the other, to unlawfully and feloniously promote a boycott of merchants and businessess and pursuant of the said unlawful conspiracy did then and there promote, encourage and enforce acts injurious to trade or commerce among the public.

This in the County of Warren and State of Mississippi, and against the peace and dignity of the State of Mississippi the affiant verily believes.

Sworn to and subscribed before me this 13th day of May.

/s/MARION R. BROWN

/s/OSCAR LABARRE
Police Justice and
Ex-Officio Justice of the Peace

[14] THE STATE OF MISSISSIPPI
CITY OF VICKSBURG

Personally appeared before me, the undersigned Police Justice and Ex-Officio Justice of the Peace of the City of Vicksburg, CHIEF MARION R. BROWN, CHIEF OF POLICE, ON INFORMATION AND BELIEF who being duly sworn, deposeth and says that Herma Barnes, Robert Wells, and Nellie Mae Green on or about the 14th day of May A.D., 1972 within the Corporate Limits of said City with the felonious intent on the part of said defendants and each of them to commit acts injurious to trade or commerce among the public did wilfully, unlawfully, and feloniously conspire, combine, confederate and agree among themselves, and each of them with the other, and did enter into an unlawful conspiracy, plan and design among themselves, and each with the other, to unlawfully and feloniously promote a boycott of merchants and businesses and pursuant of the said unlawful conspiracy did then and there promote, encourage and enforce acts injurious to trade or commerce among the public.

This in the County of Warren and State of Mississippi, and against the peace and dignity of the State of Mississippi the affiant verily believes.

Sworn to and subscribed before me this 14th day of May.

/s/ MARION R. BROWN

/s/ OSCAR LABARRE
Police Justice and Ex-Officio
Justice of the Peace

[15] THE STATE OF MISSISSIPPI
CITY OF VICKSBURG

Personally appeared before me, the undersigned Police Justice and Ex-Officio Justice of the Peace of the City of Vicksburg, CHIEF MARION R. BROWN, CHIEF OF POLICE, ON INFORMATION AND BELIEF who being duly sworn, deposeth and says that Albert Ross and Alora Larkins on or about the 14th day of May A.D., 1972 within the Corporate Limits of said City with the felonious intent on the part of said defendants and each of them to commit acts injurious to trade or commerce among the public did wilfully, unlawfully and feloniously conspire, combine, confederate and agree among themselves, and each of them with the other, and did enter into an unlawful conspiracy, plan and design among themselves, and each with the other, to unlawfully and feloniously promote a boycott of merchants and businesses and pursuant of the said unlawful conspiracy did then and there promote, encourage and enforce acts injurious to trade or commerce among the public.

This in the County of Warren and State of Mississippi, and against the peace and dignity of the State of Mississippi the affiant verily believes.

Sworn to and subscribed before me this 14th day of May.

/s/ MARION R. BROWN

/s/ OSCAR LABARRE
Police Justice and Ex-Officio
Justice of the Peace

[16] THE STATE OF MISSISSIPPI
CITY OF VICKSBURG

Personally appeared before me, the undersigned Police Justice and Ex-Officio Justice of the Peace of the City of Vicksburg, CHIEF MARION R. BROWN, CHIEF OF POLICE, ON INFORMATION AND BELIEF who being duly sworn, deposeth and says that William Rooks, Joseph Wright, Mattie Mae Jones, Louise Thomas, Rosa Lee Shields, Maude Winfield, Mary F. Robb, on or about the 13th day of May A.D., 1972 within the Corporate Limits of said City with the felonious intent on the part of said defendants and each of them to commit acts injurious to trade or commerce among the public did wilfully, unlawfully, and feloniously conspire, combine, confederate and agree among themselves, and each of them with the other, and did enter into an unlawful conspiracy, plan and design among themselves, and each with the other, to unlawfully and feloniously promote a boycott of merchants and businesses and pursuant of the said unlawful conspiracy did then and there promote, encourage and enforce acts injurious to trade or commerce among the public.

This in the County of Warren and State of Mississippi, and against the peace and dignity of the State of Mississippi the affiant verily believes.

Sworn to and subscribed before me this 13th day of May.

/s/ MARION R. BROWN

/s/ OSCAR LABARRE
Police Justice and Ex-Officio
Justice of the Peace

[17] THE STATE OF MISSISSIPPI
CITY OF VICKSBURG

Personally appeared before me, the undersigned Police Justice and Ex-Officio Justice of the Peace of the City of Vicksburg, CHIEF MARION R. BROWN, CHIEF OF POLICE, ON INFORMATION AND BELIEF who being duly sworn, deposeth and says that J. B. Edwards, Jr., Ray M. Cosby, and Larry Sims on or about the 13th day of May A.D., 1972 within the Corporate Limits of said City with the felonious intent on the part of said defendants and each of them to commit acts injurious to trade or commerce among the public did wilfully, unlawfully, and feloniously conspire, combine, confederate and agree among themselves, and each of them with the other, and did enter into an unlawful conspiracy, plan and design among themselves, and each with the other, to unlawfully and feloniously promote a boycott of merchants and businesses and pursuant of the said unlawful conspiracy did then and there promote, encourage and enforce acts injurious to trade or commerce among the public.

This in the County of Warren and State of Mississippi, and against the peace and dignity of the State of Mississippi the affiant verily believes.

Sworn to and subscribed before me this 13th day of May.

/s/ MARION R. BROWN

/s/ OSCAR LABARRE
Police Justice and Ex-Officio
Justice of the Peace

[18] THE STATE OF MISSISSIPPI
CITY OF VICKSBURG

Personally appeared before me, the undersigned Police Justice and Ex-Officio Justice of the Peace of the City of Vicksburg, CHIEF MARION R. BROWN, CHIEF OF POLICE, ON INFORMATION AND BELIEF who being duly sworn, deposeth and says that Bertha Williams, Dellora Bosly, and Willie Mae Ferguson on or about the 14th day of May A.D., 1972 within the Corporate Limits of said City with the felonious intent on the part of said defendants and each of them to commit acts injurious to trade or commerce among the public did wilfully, unlawfully, and feloniously conspire, combine, confederate and agree among themselves, and each of them with the other, and did enter into and unlawful conspiracy, plan and design among themselves, and each with the other, to unlawfully and feloniously promote a boycott of merchants and businesses and pursuant of the said unlawful conspiracy did then and there promote, encourage and enforce acts injurious to trade or commerce among the public.

This in the County of Warren and State of Mississippi, and against the peace and dignity of the State of Mississippi the affiant verily believes.

Sworn to and subscribed before me this 14th day of May.

/s/ MARION R. BROWN

/s/ OSCAR LABARRE
Police Justice and Ex-Officio
Justice of the Peace

[19] THE STATE OF MISSISSIPPI,
CITY OF VICKSBURG

Personally appeared before me, the undersigned Police Justice and Ex-Officio Justice of the Peace of the City of Vicksburg, CHIEF MARION R. BROWN, CHIEF OF POLICE, ON INFORMATION AND BELIEF who being duly sworn, deposeth and says that Frankie Young and Eddie L. McBride on or about the 13th day of May A.D., 1972 within the Corporate Limits of said City with the felonious intent on the part of said defendants and each of them to commit acts injurious to trade or commerce among the public did wilfully, unlawfully, and feloniously conspire, combine, confederate and agree among themselves, and each of them with the other, and did enter into and unlawful conspiracy, plan and design among themselves, and each with the other, to unlawfully and feloniously promote a boycott of merchants and businesses and pursuant of the said unlawful conspiracy did then and there promote, encourage and enforce acts injurious to trade or commerce among the public.

This in the County of Warren and State of Mississippi, and against the peace and dignity of the State of Mississippi the affiant verily believes.

Sworn to and subscribed before me this 13 day of May.

/s/ MARION R. BROWN

/s/ OSCAR LABARRE
Police Justice and Ex-Officio
Justice of the Peace.

[20] THE STATE OF MISSISSIPPI
CITY OF VICKSBURG

Personally appeared before me, the undersigned Police Justice and Ex-Officio Justice of the Peace of the City of Vicksburg, CHIEF MARION R. BROWN, CHIEF OF POLICE, ON INFORMATION AND BELIEF who being duly sworn, deposeth and says that Rudy L. Smith, Jennette Canda, and Willie Mae Jones on or about the 14th day of May A.D., 1972 within the Corporate Limits of said City with the felonious intent on the part of said defendants and each of them to commit acts injurious to trade or commerce among the public did wilfully, unlawfully, and feloniously conspire, combine, confederate and agree among themselves, and each of them with the other, and did enter into an unlawful conspiracy, plan and design among themselves, and each with the other, to unlawfully and feloniously promote a boycott of merchants and businesses and pursuant of the said unlawful conspiracy did then and there promote, encourage and enforce acts injurious to trade or commerce among the public.

This in the County of Warren and State of Mississippi, and against the peace and dignity of the State of Mississippi the affiant verily believes.

Sworn to and subscribed before me this 14th day of May.

/s/ MARION R. BROWN

/s/ OSCAR LABARRE
Police Justice and
Ex-Officio Justice of the Peace

[21] THE STATE OF MISSISSIPPI
CITY OF VICKSBURG

Personally appeared before me, the undersigned Police Justice and Ex-Officio Justice of the Peace of the City of Vicksburg, CHIEF MARION R. BROWN, CHIEF OF POLICE, ON INFORMATION AND BELIEF who being duly sworn, deposeth and says that Abraham Green, Jr., Robert M. Johnson, Albert Johnson on or about the 13th day of May A.D., 1972 within the Corporate Limits of said City with the felonious intent on the part of said defendants and each of them to commit acts injurious to trade or commerce among the public did wilfully, unlawfully, and feloniously conspire, combine, confederate and agree among themselves, and each of them with the other, and did enter into an unlawful conspiracy, plan and design among themselves, and each with the other, to unlawfully and feloniously promote a boycott of merchants and businesses and pursuant of the said unlawful conspiracy did then and there promote, encourage and enforce acts injurious to trade or commerce among the public.

This in the County of Warren and State of Mississippi, and against the peace and dignity of the State of Mississippi the affiant verily believes.

Sworn to and subscribed before me this 13th day of May.

/s/ MARION R. BROWN

/s/ OSCAR LABARRE
Police Justice and
Ex-Officio Justice of the Peace

[22] THE STATE OF MISSISSIPPI
CITY OF VICKSBURG

Personally appeared before me, the undersigned Police Justice and Ex-Officio Justice of the Peace of the City of Vicksburg, CHIEF MARION R. BROWN, CHIEF OF POLICE, ON INFORMATION AND BELIEF who being duly sworn, deposeth and says that Tommy Whitaker and Eddie L. McBride on or about the 13th day of May A.D., 1972 within the Corporate Limits of said City with the felonious intent on the part of said defendants and each of them to commit acts injurious to trade or commerce among the public did wilfully, unlawfully, and feloniously conspire, combine, confederate and agree among themselves, and each of them with the other, and did enter into an unlawful conspiracy, plan and design among themselves, and each with the other, to unlawfully and feloniously promote a boycott of merchants and businesses and pursuant of the said unlawful conspiracy did then and there promote, encourage and enforce acts injurious to trade or commerce among the public.

This in the County of Warren and State of Mississippi, and against the peace and dignity of the State of Mississippi the affiant verily believes.

Sworn to and subscribed before me this 13th day of May.

/s/ MARION R. BROWN

/s/ OSCAR LABARRE
Police Justice and
Ex-Officio Justice of the Peace

[23] THE STATE OF MISSISSIPPI
CITY OF VICKSBURG

Personally appeared before me, the undersigned Police Justice and Ex-Officio Justice of the Peace of the City of Vicksburg, CHIEF MARION R. BROWN, CHIEF OF POLICE, ON INFORMATION AND BELIEF who being duly sworn, deposeth and says that Eddie L. McBride and Charles Chiplin on or about the 13th day of May A.D., 1972 within the Corporate Limits of Said City with the felonious intent on the part of said defendants and each of them to commit acts injurious to trade or commerce among the public did wilfully, unlawfully, and feloniously conspire, combine, confederate and agree among themselves, and each of them with the other, and did enter into an unlawful conspiracy, plan and design among themselves, and each with the other, to unlawfully and feloniously promote a boycott of merchants and businesses and pursuant of the said unlawful conspiracy did then and there promote, encourage and enforce acts injurious to trade or commerce among the public.

This in the County of Warren and State of Mississippi, and against the peace and dignity of the State of Mississippi the affiant verily believes.

Sworn to and subscribed before me this 13th day of May.

/s/ MARION R. BROWN

/s/ OSCAR LABARRE
Police Justice and
Ex-Officio Justice of the Peace

[24] THE STATE OF MISSISSIPPI
CITY OF VICKSBURG

Personally appeared before me, the undersigned Police Justice and Ex-Officio Justice of the Peace of the City of Vicksburg, CHIEF MARION R. BROWN, CHIEF OF POLICE, ON INFORMATION AND BELIEF who being duly sworn, deposeth and says that Robert Whitaker Lee and Eddie L. McBride on or about the 13th day of May A.D., 1972 within the Corporate Limits of said City with the felonious intent on the part of said defendants and each of them to commit acts injurious to trade or commerce among the public did wilfully, unlawfully, and feloniously conspire, combine, confederate and agree among themselves, and each of them with the other, and did enter into an unlawful conspiracy, plan and design among themselves, and each with the other, to unlawfully and feloniously promote a boycott of merchants and businesses and pursuant of the said unlawful conspiracy did then and there promote, encourage and enforce acts injurious to trade or commerce among the public.

This in the County of Warren and State of Mississippi, and against the peace and dignity of the State of Mississippi the affiant verily believes.

Sworn to and subscribed before me this 13th day of May.

/s/ MARION R. BROWN

/s/ OSCAR LABARRE
Police Justice and
Ex-Officio Justice of the Peace

[25] THE STATE OF MISSISSIPPI
CITY OF VICKSBURG

Personally appeared before me, the undersigned Police Justice and Ex-Officio Justice of the Peace of the City of Vicksburg, CHIEF MARION R. BROWN, CHIEF OF POLICE, ON INFORMATION AND BELIEF who being duly sworn, deposeth and says that Johnnie Williams, Rufus Price, and Jessie Mae Green on or about the 14th day of May A.D., 1972 within the Corporate Limits of said City with the felonious intent on the part of said defendants and each of them to commit acts injurious to trade or commerce among the public did wilfully, unlawfully and feloniously conspire, combine, confederate and agree among themselves, and each of them with the other, and did enter into an unlawful conspiracy, plan and design among themselves, and each with the other, to unlawfully and feloniously promote a boycott of merchants and businesses and pursuant of the said unlawful conspiracy did then and there promote, encourage and enforce acts injurious to trade or commerce among the public.

This in the County of Warren and State of Mississippi, and against the peace and dignity of the State of Mississippi the affiant verily believes.

Sworn to and subscribed before me this 14th day of May.

/s/ MARION R. BROWN

/s/ OSCAR LABARRE
Police Justice and
Ex-Officio Justice of the Peace

[35] IN THE
UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

Filed: Jun. 1, 1972

ALBERT JOHNSON, REVEREND EDDIE L. MCBRIDE, CHARLES CHIPLIN, DAVID MCPHELP, ROBERT WHITTAKER LEE, JOHN FERGUSON, MICHAEL SIMS, TERRY ROBINSON, ROBERT WHITTAKER, JOHN DILLARD, ODELL DIXON, ISSAC REMBRANT, BETTY WASHINGTON, KATIE MAE CLARK LAWRENCE, CONNIE WILLIAMS, WILLIE GREEN, VICTOR PARSON, BENNIE YOUNG, BEN PERKINS, DANIEL WALTON, WALLACE WILLIAMS, MARY HELEN LEE, FANNIE BROWN, MILDRED C. COSEY, ALBERT ROSS, ALORA LARKINS, WILLIAM ROOKS, JOSEPH WRIGHT, MATTIE MAE JONES, LOUISE THOMAS, ROSA LEE SHIELDS, MAUDE WINFIELD, MARY F. ROBB, J. B. EDWARDS, JR., RAY M. COSBY, LARRY SIMS, BERTHA WILLIAMS, DELLORA BOSLY, WILLIE MAE FERGUSON, FRANKIE YOUNG, RUDY L. SMITH, JENNETTE CANDA, WILLIE MAE JONES, ABRAHAM GREEN, JR., ROBERT M. JOHNSON, ALBERT JOHNSON, TOMMY WHITAKER, JOHNNIE WILLIAMS, RUFUS PRICE AND JESSIE MAE GREEN, ET AL,

Petitioners,

versus

No. 72 W-7(c)

STATE OF MISSISSIPPI; HONORABLE JAMES NICHOLS, COUNTY JUDGE, WARREN COUNTY,

MISSISSIPPI; HONORABLE OSCAR LABARRE, JUDGE OF THE CITY OF VICKSBURG, MISSISSIPPI; PAUL BARRETT, SHERIFF OF WARREN COUNTY; MARION R. BROWN, CHIEF OF POLICE OF THE CITY OF VICKSBURG, MISSISSIPPI,

Respondents.

[36] AMENDED PETITION FOR REMOVAL

Petitioners Albert Johnson, and Rev. Eddie L. McBride. et al, respectfully petition this Court for removal of the above captioned case from the City and County Courts and all other State Courts, of Warren County, Mississippi to this Court, and in support of said petition, petitioners would show the following:

JURISDICTION

1. This action arises under 28 U.S.C., 1443 and 1446: 42 U.S.C. 1981 and 1983; 28 U.S.C. 1343, Title I of the Civil Rights Act of 1968, 18 U.S.C. 245 and the Equal Protection Clause of The Fourteenth Amendment to the United States Constitution.

PARTIES

2. As appears more fully below, this petition seeks to remove criminal prosecutions pending in Courts of Warren County, Mississippi, against forty-nine (49) defendants more specifically categorized as Petitioners Albert Johnson, Eddie L. McBride, Charles Chiplin, David McPhelp, Robert Whittaker Lee, John Ferguson, Michael Sims, Terry Robinson, Robert Whittaker, John

Dillard, Odell Dixon, Issac Rembrant, Betty Washington, Katie Mae Clark Lawrence, Connie Williams, Willie Green, Victor Parson, Bennie Young, Ben Perkins, Daniel Walton, Wallace Williams, Mary Helen Lee, Fannie Brown, Mildred C. Cosey, Albert Ross, Alora Larkins, William Rooks, Joseph Wright, Mattie Mae Jones, Louise Thomas, Rosa Lee Shields, Maude Winfield, Mary F. Robb, J. B. Edwards, Jr., Ray M. Cosby, Larry Sims, Bertha Williams, Dellora Bosly. Willie Mae Ferguson, Frankie Young, Rudy L. Smith, Jennette Canda, Willie Mae Jones, Abraham Green, Jr., Robert Johnson, Albert [37] Johnson, Tommy Whitaker, Johnnie Williams, Rufus Price, and Jessie Mae Green who were all arrested for alleged criminal violation arising out of the same transactions and occurrence, and the filing of multiple petitions would be so burdensome as to deny petitioners effective access to this Court except after onerous delay and would deny petitioners their asserted rights.

A. Petitioners are all Black Citizens of the United States, the State of Mississippi and residents of the City of Vicksburg, Mississippi.

B. Petitioners, Albert Johnson and Rev. Eddie L. McBride, are adult citizens of the United States, the State of Mississippi and residents of the City of Vicksburg, Mississippi.

C. All other petitioners are also Black residents citizens of the United States, the State of Mississippi and residents of the City of Vicksburg, Mississippi.

D. Petitioners are individually and in association, members of various organizations including the Concern-

l Citizens dedicated to securing equal civil and legal ghts for all citizens in accordance with the guarantees f the Constitution and laws of the United States and the tate of Mississippi.

E. Respondent is the State of Mississippi. Acting as s agents are certain officials of the County and City of icksburg, Warren County, Mississippi, to-wit:

(a) The Honorable James Nickols, Judge of the Coun- y Court of Warren County, Mississippi.

(b) The Honorable Oscar LaBarre, Judge of the City Court of Vicksburg, Mississippi.

(c) Paul Barrett, Sheriff of Warren County, Mississip- i.

(d) Marion R. Brown, Chief of Police of Vicksburg, Mississippi.

38] FACTS

3. Sometime during late March, 1972 the petitioners nd other citizens of Vicksburg, Mississippi, made arious demands upon certain merchants and city of- icials in connection with certain longstanding unfair nd/or unlawful practices engaged in by said merchants nd city officials.

A. Some of the demands made by petitioners were as ollows:

(1) creation of a civilian Police Review Board;

(2) hiring of 40% Blacks in city government at all levels:

(3) 40% Blacks in all city stores:

(4) 40% Black managers in all city stores;

(5) 40% Blacks on Urban Renewal staff at all levels;

(6) appointment of three (3) Blacks to the Vicksburg Public School Board;

(7) appointment of a majority of Blacks on the Housing Authority Board; and

(8) appointment of a majority of Blacks on the Civil Service Commission.

B. When these demands were unanswered, the petitioners and others began to peacefully and lawfully picket the business establishment of same merchants in Vicksburg, Mississippi, and began to urge the citizens of Vicksburg to boycott these business establishments. All of this picketing by the petitioners and other members of their class was done in a lawful and peaceful manner and without infringing upon the rights of any other citizen of Vicksburg, Mississippi. At no time during said picketing and boycott activities was there any threat of violence or indication of imminent [39] danger to citizens of Vicksburg, Mississippi, nor any threat of destruction of

ublic and private property, nor has there been any threat r indication of a threat to the public peace, health, and afety of the citizens of Vicksburg, Mississippi. At all imes during this picketing the petitioners were exer- ising rights under the Constitution of the United States nd under Federal laws providing for equal civil rights.

C. On or about May, 1972 petitioners: Eddie L. Mc- Bride, Charles Chiplin, David McPhelp, Robert Whit- aker Lee, John Ferguson, Albert Johnson, Michael Sims, Terry Robinson, Robert Whittaker, John Dillard, Odell Dixon, Isaac Rembrant, Betty Washington, Katie Mae Clark Lawrence, Connie Williams, Willie Green, and Vic- or Parson were arrested while standing upon the public idewalk in Vicksburg, Mississippi and charged with riminal conspiracy.

D. At the time of such arrest the petitioners in an orderly and peaceable manner were engaged in picketing and distribution of leaflets. Petitioners were subsequent- y freed on a $5,000.00 bond as the amount for bail. There nas been no trial or prosecution pursuant to that arrest.

E. Thereafter, on or about May 13th and 14th, 1972, some 40 petitioners including: Bennie Young, Ben Perkins, Daniel Walton, Wallace Williams, Mary Helen Lee, Fannie Brown, Mildred C. Cosey, Charles Chiplin, Victor Lee Parson, Odell Dixon, Herman Barnes, Robert Wells, Nellie Mae Green, Albert Ross, Alora Larkins, William Rooks, Joseph Wright, Mattie Mae Jones, Louise Thomas, Rosa Lee Shields, Maude Winfield, Mary F. Robb, J. B. Edwards, Jr., Ray M. Cosby, Larry Sims, Bertha Williams, Dellora Bosly, Willie Mae Ferguson, Frankie Young, Eddie L. McBride, Rudy L. Smith,

Jennette Canda, Willie Mae Jones, Abraham Green, Jr., Robert M. Johnson, Albert Johnson, Tommy Whitaker, Robert Whitaker Lee, Johnnie Williams and Rufus Price.

[40] F. At the time of said arrest the petitioners in an orderly and peaceable manner were engaged in picketing and distributing leaflets.

G. Petitioners have again been released from the jail of Vicksburg on bond set at $1,000.00 for those over 60 years of age and $1,500.00 for those under 60.

H. Prior to the time of the May 13th and 14th arrests, petitioners had been approached by some members of the Merchants Association and for the first time some tentative proposals were made in regard to petitioners demand.

I. Petitioner Albert Johnson was arrested May 21, 1972 and arraigned on May 22, 1972 and trial was set for May 25, 1972 in the County Court of Warren County on a charge pursuant to Section 2384-5 of Mississippi Code 1942, recompiled as amended:

> "Threats of coercion to prevent lawful conduct of business petitioner Johnson was released on a $2,500.00 bond pending trial"

J. Upon information and belief other petitioners and members of their class will be arrested by respondents their agents and charged with violation of said statute if the aforementioned picketing activity continues.

K. Upon information and belief, the sole purposes of he respondents in enacting and enforcing the said tatute was and is to intimidate, punish and harass etitioners and others of their class for exercising their ights to freedom of speech, petition and assembly, and to iscourage and prevent petitioners and their class from btaining their constitutional rights, and enjoying them qually with white citizens.

41] *GROUNDS FOR REMOVAL*

4. The statutes under which petitioners are prosecued (Conspiracy statutes 2056 and all other conspiracy tatutes as well as 2384.5) are on their face and as applied epugnant to the Constitution of the United States of America and the Constitution of the State of Mississippi.

A. The aforesaid conduct and activity of petitioners was done in the exercise of rights guaranteed to petitioners by Title I of the Civil Rights Act of 1968, 18 U.S.C. 245.

B. The charges against petitioners, their arrest, and subsequent prosecution on those charges have no basis in fact and have been effectuated solely and exclusively for the purpose and effect of depriving petitioners of their Federally protected rights, including by force or threat of force, punishing, injuring, intimidating, and interferring, or attempting to punish, injure, intimidate, and interfering, or attempting to punish intimidate, and interfere with petitioners, and the class of persons participating in the Warren County boycott and demonstrations, for the exercise of their rights peacefully to protest discrimina-

tion and to conduct and publicize a boycott which seeks to remedy the denial of equal civil rights as described in paragraph A through K herein which activities are protected by 18 U.S.C. 245.

C. These illegal prosecutions have caused petitioners, their relatives and friends to encumber a substantial percentage of the financial resources within the Black community of Vicksburg, Mississippi in an effort to obtain Petitioners release onbond pending trial. Petitioners and others sharing similar views who but for the illegal arrests and prosecutions would take part in the protected activities described above are prevented from vindicating their Federal Constitutional and Statutory rights listed above.

[42] D. As a result of the above-stated, petitioners are denied and cannot enforce their rights asserted under 18 U.S.C. 245 in the City Police Justice Court or in the County Court of Warren County, or any other court of the State of Mississippi: any proceeding in such courts would constitute a denial of the rights and protections conferred by 18 U.S.C. 245 because that statute protects those who are arrested for exercising the rights and privileges conferred by that statute, not only from conviction in state courts, but also from prosecution in those courts.

E. By the conduct of state and county officials as set out above, petitioners are denied and continue to be denied the full and equal benefit of laws and proceedings relating to the criminal process in Warren County, as the same are enjoyed by white citizens, and were subject and continue to be subjected to unequal and racially discrim-

inatory punishment, and exactions in violation of 52 U.S.C. 1981 and 1983 and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

F. The deprivations of rights related above were carried out by state and county officials under color of statutes, ordinances, regulation, customs, and usages of the State of Mississippi and Warren County. As a result of such denials, petitioners are denied and cannot enforce their rights asserted under 42 U.S.C. 1981 and 1983 and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, because any further prosecution of proceedings under the circumstances related above in Police Justice Court or County Court of Warren County or any other courts of the State of Mississippi, would constitute a denial of the protection conferred by those statutes and constitutional provisions.

G. In as much as the proceedings sought to be removed are criminal, no bond or filing fee is required.

WHEREFORE, petitioners pray that the aforementioned criminal prosecutions be removed to this Court from the Police Justice [43] Court of Vicksburg and County Court of Warren County, Mississippi, pursuant to 28 U.S.C. 1443 and 1446, that the prosecutions be dismissed and that this Court grant such further relief as may be proper.

Respectfully submitted,
/s/ JAMES WINFIELD
JAMES WINFIELD
125 1/2 North Farish Street
Jackson, Mississippi

/s/ FIRNIST J.
ALEXANDER, JR.
FIRNIST J. ALEXANDER, JR.
1072 Lynch Street
Jackson, Mississippi

FRANK PARKER,
General Counsel
ACLU
233 North Farish Street
Jackson, Mississippi
Attorneys for Petitioners

(Verification omitted in printing.)

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[1] UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

(Number and Title Omitted)

Filed: Jun. 20, 1973

APPEARANCES:

HON. FIRNEST JAMES ALEXANDER;
1072 Lynch Street;
Jackson, Mississippi

HON. JAMES WINFIELD;
1072 Lynch Street;
Jackson, Mississippi
For the Plaintiffs.

HON. JOHN ELLIS;
District Attorney,
Vicksburg, Mississippi

HON. GEORGE CHANEY:
Warren County Prosecuting Attorney;
Vicksburg, Mississippi

HON. P. ROGER GOAGE;
Asst. Attorney General;
P. O. Box 220;
Jackson, Mississippi
For the Defendant

BE IT REMEMBERED that on, to-wit: Monday, June 5, 1972, the above styled and numbered cause came on for hearing before the HONORABLE WILLIAM HAROLD COX, United States District Judge for the Southern District of Mississippi, in the Jackson Division, at Jackson, Mississippi, when the following proceedings were had and entered of record.

* * * *

[8] BY THE COURT:
What statute was the indictment charging these people [9] with violating?

BY MR. CHANEY:
There has been no indictment yet, Your Honor. There has been a preliminary charge and they are out on bond awaiting action of the grand jury in most of the cases. Now the single case, the Johnson case, is a misdemeanor, and that is now presently pending in the county court and

will be tried only in that court. They are presently charged under Section 2056 of the Mississippi Code which is a general conspiracy statute containing a number of subparagraphs. The subparagraph used in this particular instance is where it is declared to be a crime to enter into a conspiracy harmful to trade or commerce. Now this statute has been on the law books of this State, I believe, since 1906, is where it is first picked up historically in the Code. In 1968, or there about, the penalty of the statute was changed; the substance of it remained, at least insofar as this particular subparagraph was concerned, remained the same. Now there is a long line of authorities in the textbooks were statutes of a similar nature exist in most, if not all, of the other states. It has been held to be constitutional; there is nothing of a racial law of any nature; there is no federally protected right [10] as it applies to race.

* * * *

[37] BY THE COURT:
Who is your witness?

BY MR. WINFIELD:
Bennie Young.

BY THE COURT:
Is the rule invoked?

BY MR. ELLIS:
We ask that the rule be invoked, Your Honor.

(Witnesses removed from courtroom.)

BENNIE YOUNG,

called as a witness for and on behalf of Plaintiff, was sworn and testified as follows:

DIRECT EXAMINATION

[38] BY MR. WINFIELD:

Q Would you tell the court your name, please sir?

A My name is Bennie Young.

Q Mr. Young, where do you live?

A 1412 First Pea Street, Vicksburg.

Q How long have you been a resident of Vicksburg. Mr. Young?

A Since '25.

Q Will you tell the court if you are employed?

A I was employed with the U. S. Corp of Engineers 31 years.

Q You are retired now, sir?

A I am retired, about two months ago.

Q Were you arrested on or about the 13th of May?

A Yes sir, around 5:00 the 13th of May.

Q Will you tell the court what were the facts surrounding your arrest, in your own words?

A I was carrying a sign, I walked about a block and a half. They never did say I was arrested, nobody never told me I was arrested. They told me to get in the car and they took me to the police headquarters. Then they asked me was I with this group, and I stated yes; then they booked me and took me down and put me in the car and took me to jail.

Q Mr. Young, why did you picket? You did say you were [39] picketing, isn't that correct?

A That's correct.

Q Why were you picketing, sir?

A I disapproved of the activities of the law that would be carried on with black people, since I worked right at the City Hall. All through the day I could see them carrying the black people in there, one thing or another. And we don't have no black city representative, and down in the city we didn't have no black people with no jobs concerning black people's affairs. I studied over this situation, I —

BY THE COURT:

I'm not interested in whether you are guilty or not guilty, I'm going to let the county find that out. I'm interested in knowing whether or not you had some federal constitutional right violated. I just want to hear about that and nothing else.

BY MR. WINFIELD:

Q Will you address yourself to what you were doing, the reason why you were out there, and that is particular grievances you felt you had, and what was happening, what you were doing at the time you were arrested.

A If I can understand your meaning. The situation occurred with molesting this little 7 year old girl. That give me the idea I was in my rights to try to [40] do something about it, in other ways, a way of right. So I decided I would protest that type of action, so I got with the sign and walked about, 30 of us, after the rest of them were arrested in that same manner. I could go on with a number of other incidents that have happened, there are several to this case.

Q Mr. Young, what conditions were you addressing yourself to?

A I was protesting by carrying this sign of my disapproval of action that was being carried out.

Q Were there any practices in particular that you felt your picketing would affect?

A I felt like that would be with the mayor and the commissioners, because I could see them in and out of the City Hall different times of days, and it seemed like they had something they were dealing with. I thought they could do something about it if they wanted to.

Q Mr. Young, have you attended any meetings, mass meetings, where boycott or similar activity were discussed?

A Never did.

Q The question is did you attend any mass meetings?

A I attended the meetings, I don't know if you call that mass. I attended the meetings.

[41] Q While you were there, do you ever recall anyone discussing intimidating persons or coercing persons to stop them from doing business?

A The meetings where I attended we sung and prayed and read the Bible. There wasn't no discussion of intimidating anyone, there wasn't nothing said or discussed about doing anything. And it always was in what we were going to do, there was no violence, peaceful whatsoever we do. That would be discussed. We had church meetings, something I've enjoyed ever since I could remember, that's what we did.

Q Prior to your arrest, were there other persons picketing that you know of?

A There was about 30 of us.

Q I mean prior to May 13. On May 2 there were some arrests, you were not arrested on May 2?

A There was a group arrested. I wasn't in that group. I hadn't decided I would go. Well I made up my mind when the lady cursed my daughter. I decided in my mind what could I do. She came home from Jackson State that Sat-

urday and said she was going to see what she could do, and when they cursed her I decided I think I should try to see what I could do.

Q Now have you intimidated anyone, Mr. Young?

A I didn't say a word and I continually told them to [42] fall in behind me and don't say a word to nobody.

Q How were you marching or picketing?

A We were as near, I'd say about 7 or 8 feet apart, on that Saturday evening. Didn't nobody say anything. When I knew anything there were about six or seven police cars run up on the corner and started waving everybody in and taking the signs and putting them somewhere.

Q How many times did you picket?

A That was my first time.

Q That was the day before Mother's Day?

A Right. It was on the 13th.

Q You say you attended most of the meetings?

A Most of the meetings. I think I missed two nights, I was in jail then.

BY MR. WINFIELD:

No further questions.

CROSS EXAMINATION

BY MR. CHANEY:

Q I don't believe I got your name, would you repeat it?

A Bennie Young.

Q Now, Mr. Young, you say that you were employed by the city of Vicksburg?

A No sir. The Corp of Engineers.

Q I thought you said you worked around the City Hall [43] after you retired.

A No sir.

Q Did you say you had been around the City Hall a good deal?

A I have been right near at the post office, right there.

Q I see. Now you say you disapproved of the activities of the law. That you see them carrying black people in, but you don't see any white people going in?

A I didn't say, I said I see them carrying black people, I didn't say about white people.

Q You see them carrying white people also there to the city court, don't you?

A I didn't see any.

Q You didn't see any?

A I didn't see any.

Q What day were you there?

A Well I don't have that date, sir.

Q Just one day?

A No sir, I don't know how many, but I was right there. Everytime I see there was black people going in.

Q You told Mr. Winfield that you had been to some meetings. Were these the boycott meetings?

A I'm afraid I can't answer that. We went to a meeting, you can call it anything, people still say a boycott meeting, but I don't think it was a boycott meeting.

[44] Q You don't think it was a boycott meeting?

A I know it's not a boycott meeting.

Q Was a boycott talked about?

A No sir.

Q Boycott wasn't talked about?

A Wasn't talked about.

Q Do you remember the meeting in May of this year at the courthouse when there were about 1,000 people up there? Were you at that meeting?

A I was there, I don't know how many people were there.

Q There was an awful lot, wasn't there?

A Yes.

Q And the Chief of Police afforded you protection up there that day, did he not? Roped it off so that nobody could pass in the streets.

A I came in the back of the courthouse. I didn't see any ropes, I don't know where the ropes were.

Q You didn't see the policemen out there on either end of the block? They had motorcycles keeping traffic from coming through there?

A I didn't see that.

Q You didn't see any traffic come through there, did you?

A People were standing there and I didn't know what the ropes caused —

Q And you didn't know there were police around there —

[45] A Somebody said here they come to take my picture. I see two heads and they stopped. I don't know what they were there for.

Q Did they take your picture?

A They didn't take my picture, or I don't know. Somebody said they were coming, but I didn't see them take no pictures.

Q Were you engaged in the boycott?

A Engaged in the boycott?

Q Yes, sir.

A I had been attending meetings at the hall, having church meetings, and I was at that meeting at the courthouse. Was that a boycott meeting?

Q Well, you heard the boycott talked about there by

Rev. McBride, Rev. Chiplin, and a number of other things that day, didn't you?

A They called it, something, a buying campaign.

Q Selective buying campaign.

A They didn't say a boycott meeting.

Q They were trying to get the people to quit trading with the white merchants and trade only with black merchants, were they not?

A They said keep your money in your pocket, they didn't say where you trade.

Q They didn't want black people to go in the white-owned [46] stores in Vicksburg, did they?

A Well I can't say what they wanted them to do, sir.

Q Well what was the purpose in your carrying your sign?

A I was carrying my sign protesting this activity of the law with black people.

Q And who were you protesting to?

A The city.

Q To the city?

A To the city.

Q To the mayor?

A The mayor of the city is the way I understand it.

Q Did you go to the mayor's office and make your protest?

A No sir.

Q By your acts of carrying your sign on the street, isn't it a fact that you intended to keep people from going into places of business?

A Intended to keep them?

Q Yes.

A I still make my statement was to protest the type of law that was taken up on black people. That was the chief of mine, I reckon they were doing the same thing.

Q You wanted to keep people out of the stores because you felt that black people were being done an [47] injustice, is that right?

A I ain't said I wanted to keep them out of the stores.

Q Why did you want them not to go in the stores then? Let's put it that way.

A I wanted them to do something about giving them injustice in the city, around the city. We don't have no black people in the city government, no place.

Q Do you know Clyde Harris?

A Yes.

Q Is he a policeman?

A Yes.

Q Is he a black man?

A Yes.

Q Do you know Roosevelt Broach?

A Yes.

Q Is he a policeman?

A Yes.

Q A black man?

A Yes.

Q Bill Reddick?

A Yes.

Q Black man?

A Yes.

Q Policeman?

[48] A Not at City Hall. You got anybody at City Hall?

Q James Chiplin?

A Yes.

Q Do you know James Chiplin?

A Yes.

Q What kin is he to Charles Chiplin?

A Brother.

Q Is he a policeman?

A That's right.

Q And there are others, are there not? Walter Cole?

A That's right.

Q Do you know him?

A Yes.

Q There are black men in the Deputy Sheriff's, are there not? Is that right?

A They're not in city offices.

Q These are law men, are they not, all those that I've named?

A Yes sir, they're out there.

Q They are law men?

A Yes sir.

Q But what you were protesting about is something that the grand jury had done, was it not?

A I don't know if the grand jury did anything.

Q You mentioned something about a little 7 year old girl [49] that might have been violated.

A I didn't know that a grand jury action was taken on that case.

Q You didn't know about that. You were complaining then about the inaction or nonaction of the grand jury, were you not?

A Well that particular case now, all the words and what was said and what was being done, I don't have the particular words that were being spoken in that action. But I did know when I finally went to this meeting it was explained that this man had been charged $100 and released. I knew the man and had seen him because I carried my car there for him to work on.

Q You were protesting to the merchants about what the grand jury had done or had not done, is that right?

A I don't, you guys —

BY MR. ALEXANDER:

Your Honor, the witness has already explained what he was doing, and counsel —

BY THE COURT:

He thinks you are running the court and he's asking you whether or not he should answer. Go along.

BY MR. ALEXANDER:

I think that counsel is deliberately trying to confuse [50] this witness. The witness has already testified that he was engaged in the activity for a variety of reasons. Counsel —

BY THE COURT:

Well he's on cross examination counsel, and we have to allow a liberal cross examination. Go along. I'm not interested on either side whether this man is guilty or not guilty, I'm interested in knowing what federal right he was exercising to cause him to be accused of a State charge.

BY MR. ALEXANDER:

Your Honor, I believe he has already indicated what the right was, and we believe it is irrelevant what the purpose of exercising that right was.

BY THE COURT:

Well, I believe the man should be counted.

BY MR. CHANEY:

Q Would you tell us why you were protesting on Washington Street away from the City Hall and away

from the courts and away from anyone who could respond to your protest?

A Tell you why I was marching on the street?

Q Yes.

A I marched on the streets because I presumed I had a right, and that was the way, a respected way, of [51] protesting of the law without having doing any violence or anything. Now that's the way I presumed I was in my right to protest, to walk, in other words protest the activities of this city law. Because we have a man in Parchman right now. I could bring on a number of things which were stated by the, they sent him, somebody said, 15 years.

Q Were you wearing or carrying a sign while you were on the street that day?

A Yes sir, I did have a sign.

Q Were there other people similarly situated as you?

A I told you awhile ago.

Q You were they, do you know?

A Now let me say this, there was a lot of people there, some of them I knew and some of them I didn't. The ones that were around me I didn't know them. There was so many at the same time. When I saw the law, the guns, and everything on them, I didn't try to see who they were, because I hadn't did anything I thought was necessary for them to have all that kind of guns, and load me up and pushing and so on.

Q What did your sign say that you held?

A Let me see. I did remember, but —

Q Did you prepare and make the sign yourself?

A I did not.

[52] Q Did you write what was upon the sign?

A I did not.

Q So you really don't know recall and don't know what was on the sign?

A I did know.

Q Did you write somebody's tag number on the sign when you saw them go into the store?

A Tag number?

Q Yes, automobile tag number.

A I can't give you my tag number.

Q Did you write any tag numbers down?

A I didn't write any tag number.

Q Where did you obtain this sign?

A We have an office, they have, we, because I'm black, that's we, on 17 Grove Street.

Q Who has that office?

BY MR. ALEXANDER:

Your Honor, we object to this. It's wholly irrelevant, the activity that the petitioner was engaged in at the time of his arrest. Where he got the sign is irrelevant; that fact is, he was carrying a sign.

BY THE COURT:

I don't know that it is, counsel. I asked you if you wanted to have live testimony, and that's the only reason I'm letting you have live testimony so [53] that the facts can come out. You said it was best yourself, instead of the affidavit form. Overruled.

BY MR. CHANEY:

Q Who had this office at 717 Grove Street?

A It's the gentleman there who's here.

Q Mr. Ferguson?

A It's his office there. Yes, we have space there in Mr. Ferguson's office. We have a business place there.

Q Are you a part of the group called Concerned Citizens?

A I'm not a member.

Q You're not a member of Concerned Citizens?

A No sir.

Q Are you working with that group, helping them out?

A No.

Q You're not helping them out?

A I go to the service there, the church service every night.

Q But you're not a member of Concerned Citizens?

A No.

Q And you're not engaged in the same endeavor that they are engaged in?

A Well what they are engaged in and what I'm doing, now I can't say what they are engaged in.

Q I'm speaking of the boycott.

[54] A Well I'm not engaged in the boycott.

Q You're not engaged in that one —

A I go to the service we have. You see we have church service.

Q Who gave you this sign?

A Who gave me that sign?

Q Yes.

A I reached on the corner and got it.

Q Were there a number of signs over there?

A I don't know, sir. I done got me one and I don't know how many were over there.

Q Did other people reach and get signs also?

A Yes, I think they did. Yes, I saw some small children that got signs. They put babies and older people in jail.

Q How many people were at 717 Grove Street on this particular day?

A I don't know sir.

Q Ten? More than ten or less than ten?

A It was about 30 that was arrested. Where they all come from, I don't know.

Q Had they all been to 717 Grove Street?

A I don't know, sir.

Q Where is Mt. Nebo Lodge? Do you know where that is?

A That's just in there somewhere.

[55] Q Is that on Grove Street also?

A That's right.

Q Is it near 717?

A It's somewhere.

Q There were a number of people who got signs then at this address at 717 Grove Street that same day, were there not?

A The only thing I see was smaller children getting these signs.

Q Were you the only grown person in there?

A There were some more there, but I didn't see them get signs. When we all out out there in the street everybody had signs. Where they come from and who got them, I don't know where, there was so many of them.

Q What time did you go to 717 Grove that day?

A I went there about, somewhere around 15 minutes to 5:00, 4:30, somewhere near about that.

Q In the evening?

A Yes sir.

Q How long did you remain there before you left with the sign?

A About 5 minutes.

Q Why did you go there?

A Why did I go there?

[56] Q Yes sir.

A My daughter was somewhere and I wanted to see where she was.

Q You thought she would be there?

A Well, it was possible, because she does some typing there.

Q And you just accidentally ran into this other?

A No sir, I went there to see, there wasn't no accident, I went there to see if she was down there typing.

Q And you picked up your sign?

A I picked up my sign after I found out what happened.

BY MR. CHANEY:

If Your Honor will indulge us just a moment.

BY THE COURT:

All right.

BY MR. CHANEY:

Q Tell me what the word "Uncle Tom" means to you?

A Means to me?

Q Yes sir. What does it mean?

A I don't know what it means, that's just what I said.

Q Is it good or is it bad?

A I don't know what it means to anybody else.

Q If I called you an Uncle Tom, which I am not doing, but if I did, would that be a compliment to you, or would that be an insult to you?

[53] A It wouldn't make any difference.

Q It wouldn't make any difference?

A If I'm that, I'm just that, whether I like it or not.

Q Do most black people like to be called Uncle Tom?

A I worked with a group of boys, the whole time I

worked with them I called them Uncle Tom all the time and they laughed it off.

Q What does an Uncle Tom list mean?

A List?

Q Yes. If they read your name out in a meeting and said you were an Uncle Tom, would that be good or would that be bad?

A It wouldn't make me any difference. If I was an Uncle Tom it would just mean what it wants to.

Q I wouldn't make any difference?

A Wouldn't make any difference.

Q Do you know a man by the name of Charles Evers?

A Sure I know him.

Q Do you know him?

A Yes.

Q Know him well?

A Know him well.

Q Is he well known in the State of Mississippi?

A I don't know about that.

Q Did he run for governor?

[58] A He ran for governor.

Q And he's mayor of Fayette, is he not?

A That's right.

Q He's had a real high office in the NAACP, has he not?

A I don't know about that.

Q Do you know Mr. James Winfield?

A Yes sir.

Q And do you know Welton Wardell?

A Yes sir.

Q I'll ask you whether or not on the night of May 3, on or about that night of May 3, you saw the television news cast from Jackson wherein Mr. Wardell, Mr. Winfield, and Mr. Evers were on television? Did you see that?

A I see part of it, I didn't pay it too much attention.

Q Did you see Mr. Evers in the presence of Mr. Winfield and Mr. Wardell talking about the Vicksburg boycott? Did you see that?

A I didn't remember the word used as boycott. I hear only, excuse me, if you will allow me to say what I've seen.

Q I just want to ask you if you saw it.

A I could tell you the part I saw.

Q I'll get to that in just a moment please. Did you see and hear Mr. Evers say in the presence of Welton [59] Wardell and James Winfield that black people, substantially this: that we can discipline black people and it's none of their business what we do with them? Did you hear Charles Evers say that?

A I didn't hear him say that.

Q You didn't hear him say that?

A No sir.

Q You don't deny that he did say it, do you?

A The only thing I can say is I didn't hear it.

Q You didn't hear it?

A That's right so I can't say what he did.

BY MR. CHANEY:

That's all.

BY MR. ALEXANDER:

No further questions.

(Witness Excused)

BY THE COURT:

Who do you have next?

BY MR. WINFIELD:
Johnny Ferguson.

JOHNNY FERGUSON,
called as a witness for and on behalf of Plaintiff, was sworn and testified as follows:

DIRECT EXAMINATION

BY MR. WINFIELD:
Q Will you tell the court your name please?
[60] A Johnny James Ferguson.
Q Mr. Ferguson, where do you live?
A 1320 Openwood Street, Vicksburg.
Q How long have you lived in Vicksburg, Mr. Ferguson?
A 28 years.
Q Where are you employed, sir?
A I'm self-employed. Great Southern Production.
Q Great Southern Production, what's that?
A It's a promotion company, I buy and sell entertainment.
Q Where is your office located?

BY THE COURT:
You buy and sell what?

BY THE WITNESS:
Entertainment.

BY MR. WINFIELD:
Q Where is your office located?
A 717 Grove Street, Vicksburg.

Q Did you have an occasion to be arrested on or about the 2nd of May, 1972?

A Yes, I was.

Q Can you tell the court in your own words what activity you were involved in at the time of your arrest?

A I'm on the board of Concerned Citizens in Vicksburg, and the time I was arrested I was at home.

Q On May 2 you were at home?

[61] A May 2 I was at home, and Lt. Cole and a Capt. Coller came to my house and said I was charged with criminal conspiracy. They had a warrant for my arrest. And later after I got in the car and they were taking me to the police station, they told me the charge was conspiracy, criminal conspiracy.

Q What activity had you been involved in for the Concerned Citizens?

A The activities like I said was coordinating the activities the people in Concerned Citizens wanted the member of the board to coordinate for them. They gave us our directives and we would try and implement them to the best interest of —

Q What were those objectives?

A To find ways to get more jobs for black people, to try to get black people on Civil Service, jobs on boards of education, to see what could be done for needy families that should be on Welfare or Social Security, housing, the whole public service that should be rendered by the city.

Q Mr. Ferguson, what is your educational background?

A I attended high school in Vicksburg, I obtained a B.S. degree from Tougaloo College in economics, and I earned a Master's degree in business administration from Atlanta University.

[62] Q Can you tell the court just what had been taking

place in Vicksburg in terms of activities? Just tell the court what you were doing as part of the board.

A We were just coordinating the activities that the people of Concerned Citizens of Vicksburg were concerned about. As I said, they wanted to know about welfare, the needy families who needed welfare, they wanted to know about Social Security. They thought that a lot of people who were eligible weren't receiving it. They wanted to know about housing, and they felt that a lot of people needed that. So our main involvement was to find ways of channels or avenues that more people could get these jobs, they could get better housing, to try and get more people on welfare, those who were eligible.

Q Were you using picketing as a device for —

A Yes we did.

Q When did you start picketing, or the Concerned Citizens people start picketing?

A It was March 24 or 25, I can't remember the exact date.

Q How long did this picketing occur before there was an arrest? Before the May 2 arrest? Somewhere over a month or so?

[63] A Yes, it was more than a month. The picketing started on Friday, was either the 24th of 25th of March, and the first arrest was on May 2.

BY THE COURT:

Is picketing going on in Vicksburg now?

BY THE WITNESS:

No, it isn't going on now for the simple reason that if anyone gets on the street with a picket sign they will be charged with criminal conspiracy, and the bail is astronomical.

BY MR. CHANEY:

I object to the last answer, Your Honor, as being wholly an opinion of the witness, and I ask that it be stricken.

BY THE COURT:

I'll overrule that. There is always a lot of heat involved in these cases, more heat than light always.

BY MR. WINFIELD:

Q Mr. Ferguson, why do you feel that they would be arrested if they were picketing?

A Well, first of all I wasn't arrested for picketing, because I wasn't on the street, but I was charged with that, with criminal conspiracy. But there has been, I've heard statements while I was being booked [64] that anyone on the street, by the Chief of Police, that anybody on the street with a picket sign would be arrested. I was being booked on May 2 when he made the statement in my presence.

Q Do you know of any people who have had picket signs in Vicksburg and have not been arrested since May 2?.

A Who have had a picket sign and have not been arrested?

Q May I restate the question. Were there any picketing between May 2 and May 13?

A Yes there were.

Q There was picketing between May 2 and May 13?

A No, because May 2 was when we got arrested, and the second picketing was the 13th which was the Mother's Day march. No, there wasn't any picketing between those dates.

Q What group was picketing on May 13, the first group to start picketing?

A The mothers who were marching in view of Mother's Day marched downtown. They weren't arrested at first, only after their march was over and was home. Rev. McBride was picketing, he was arrested, they heard about it and they wanted to show their grievance that if he should be arrested they figured that they all should be in jail so they started marching, picketing again, and they all were arrested.

[65] Q Mr. Ferguson, have you attended any meetings of merchants and city officials where they dealt with the problem of solving the selective buying campaign or boycott activities?

A Yes, I have.

Q Do you recall when you attended those meetings?

A I think about the last week, I'm not sure of the day, I think it was the last week in April. That was the first meeting with the merchants.

Q Had there been any tentative agreement or tentative suggestions on the part of the city as far as you were concerned?

A No there hasn't. After that first meeting, that was the second meeting we are talking about what could be done, and what they were, you know, prepared to do. But after that there's been no —

Q Were there any discussion of the criminal charges from anybody?

A Yes, at the first meeting there was a discussion I think by a Mr. Ford, I don't remember his first name. That if the picketing would stop that he would see to it, or something to that effect, that the charges would be dropped.

Q Why do you feel that those criminal conspiracy charges have been placed upon the people there in Vicksburg?

[66] BY MR. ELLIS:

We object to that, if Your Honor please, that would be purely opinion.

BY THE COURT:

I sustain the objection. You can tell what you know, what happened, you can tell us that. Let me ask you this: do you have any colored people who cross your picket lines?

BY THE WITNESS:

I haven't witnessed any black people crossing the picket line. I've heard that there have been, I haven't seen any.

BY THE COURT:

What did they do to them?

BY THE WITNESS:

We aren't forcing anyone not to shop. The idea of the Concerned Citizen is not to advocate violence; we try to explain the position of the majority of the black people of Vicksburg in the sense that we are asking for more jobs, we are asking for better conditions, better housing, we are asking for employment on board based on the population of Vicksburg.

BY MR. WINFIELD:

Q Mr. Ferguson, you are on the board, is that correct?

[67] A Yes I am.

Q Have you had any reports of people being, any action taken against people for breaking the line or going into stores?

A No.

Q Have you ever intimidated anyone or used any coercion to prevent anyone?

A No.

Q Have you been at most of the meetings, many of the meetings?

A Yes I have.

Q Have you ever recalled anyone discussing using violence or intimidating anyone?

A No I haven't. The board has take the position to discourage any kind of violence whatsoever.

Q Where is this discouraging or discussion generally taken place?

A They are usually taken place at the Concerned Citizens office.

Q Is there any discussion in meetings?

A Yes. In fact they all are discussed there. The people present a list of things they want the board to coordinate from the floor of the mass meeting. The board began to put into action some of the ideas and suggestions that the people in the mass meetings [68] have come up with.

BY THE COURT:

Is that everything that your organization has done toward getting those objectives that you mentioned?

BY THE WITNESS:

Up to this point, yes we have.

BY THE COURT:

Up to what point?

BY THE WITNESS:

Up to this point, because we haven't been, we met with

the city officials once, and the merchants twice, to discuss what could be done in terms of alleviating some of the hardships that black people have to endure in Vicksburg.

BY THE COURT:
What age group belong to your organization?

BY THE WITNESS:
Well it's not a membership of sort or organization —

BY THE COURT:
Everybody that's black and anybody that wants to carry a placard is a member. Is that right?

BY THE WITNESS:
The whole community is part of Concerned Citizens.

BY THE COURT:
Do they have to come from Vicksburg?

[69] BY THE WITNESS:
Well the name of the organization is Vicksburg Concerned Citizens, so they all are from Vicksburg, yes.

BY MR. WINFIELD:
Q Mr. Ferguson, do you know of any people from the outside community ever picketing or taking part in those activities? With the exception of probable speakers.
A No I don't.
Q Mr. Ferguson, have you ever taken anyone's picture that you had seen crossing a line or anything to that effect?
A No I haven't.

Q Have you known of anyone taking pictures?

A No I don't.

Q Have there been any pictures presented at mass meetings?

A No.

Q Have there been any tag numbers read off at a mass meeting that you know of?

A No.

Q Have you heard of an Uncle Tom list?

A Heard of an Uncle Tom? No I haven't.

Q With reference to this particular motive?

[70] A No.

Q Have you made any phone calls to any black or white citizens not making yourself known to the other person?

A No I haven't.

Q Do you know of any other person that is part of Concerned Citizens doing any of these activities?

A No I don't.

Q Mr. Ferguson, as far as you know, will you just in summary tell us what activities these people were involved in when they were arrested as far as you know?

A The majority of the people who were arrested, other than those who were home like I was when they were arrested, were picketing the downtown area, Battlefield shopping area, protesting their grievances. Some of them had grievance ranging from finding jobs to better housing.

Q Do you know of any traffic jams or any disturbances in the city because of the picketing?

A No.

BY MR. WINFIELD:

No further questions.

CROSS EXAMINATION

BY MR. ELLIS:

[71] Q How old did you say you were?

A I didn't say how old I was, I said how long I'd lived in Vicksburg. I'm 30 years old.

Q Who is the leader of the Concerned Citizens?

A The leader of the Concerned Citizens? The chairman of the board is Rev. E. L. McBride.

Q And he is the spokesman of this group?

A Yes he is.

Q Do you see him in the courtroom?

A Yes I do.

Q He's in the courtroom? Were you on the executive committee of Concerned Citizens on the evening of March 23, 1972?

A Yes I was.

Q Had a boycott been placed into effect that day?

A I don't remember the exact date, it was a Friday, yes.

Q Had your group given any notice to any of the merchants as to any particular grievance against them?

A Yes.

Q I'll show you this (hands document to witness). Can you identify that?

A Yes I can.

Q Was that your list of grievances?

A Yes it was.

Q From which you were causing a boycott of merchants [72] in the city of Vicksburg?

A A selective buying campaign.

BY MR. ELLIS:

Which we offer as an exhibit to his testimony Your Honor.

BY THE COURT:

It may be marked for identification.

(Received in evidence and marked Defendant's Exhibit #1.)

BY THE COURT:

Does the other side want to see that? Put it in for identification until the other side rests.

BY MR. ELLIS:

Q Now was that the bounds under which the boycott was originated?

A I'm not sure I understand your question.

Q In other words, the list of demands that were being made in that particular letter there, was it complaints that your group had against the white merchants?

A Those were some of the complaints.

Q Which white merchant did you have a particular complaint about, any specific complaint about?

A It wasn't specific, it was collectively. I felt that they all could aid in giving better and more jobs to black people.

Q Was the A&P store in Vicksburg placed in the boycott?

[73] A Yes sir.

Q Were you aware that there is a black manager of the A&P store on Clay Street in the city of Vicksburg?

A No.

Q Are you aware of the percentages of blacks that are employed in this particular A&P store?

A No.

Q Would you say that it was over 40 percent blacks employed in the A&P store?

A I don't know sir, I couldn't say.

Q But they were placed in the boycott?

A Yes sir.

Q You had no particular grievance against the A&P store in the city of Vicksburg?

A As I said it was collective.

Q What about J. C. Penney's in Vicksburg?

A The same holds true for J. C. Penney's.

Q Would the same hold true for all businesses that were either owned by white people or operated by white people in the city of Vicksburg?

A I'm not sure I understand your question.

Q Was there any white store in Vicksburg that was not placed under boycott?

A Yes.

[74] Q Which white stores?

A Drug stores, hardware stores, hardware and supply stores.

Q Would you name the stores?

A This would include all of them.

Q Do you know where the Crystal Pharmacy is in Vicksburg?

A I think it's on Washington Street.

Q Do you know Albert Johnson?

A Yes I do.

Q Was he a member of your group?

A He is in Concerned Citizens.

Q Does he work in conjunction with your group to encourage a boycott of merchants in the city of Vicksburg?

A He encourages the activity of black people to secure better and more jobs, housing, better economic conditions for black people.

Q Do you know Bennie Williams?

A Bennie Williams? I can't say I do.

Q Were you in the presence of Albert Johnson and your leader Rev. McBride in front of the Crystal Pharmacy during the month of May in which Albert Johnson put his face up to the window and whistled for Bennie Williams to come outside, and Bennie Williams being a white man, and then confronted him concerning him [75] making purchases in that store?

A No I wasn't.

Q You weren't present and didn't hear the threats that he made to him to encourage him not to shop at white-owned businesses?

A No.

Q Have you heard about it?

A No I haven't.

Q You have not? What type of persuasion would you do to encourage people to keep from shopping at white-owned stores?

A Reasoning.

Q Reasoning?

A Yes.

Q You attended most or all of the meetings of the Concerned Citizens?

A Most of the meetings, yes.

Q Did you as a member of the executive committee approve certain leaflets and pamphlets that would be circulated among the black community?

A I don't approve, the people at the mass meeting approve it, we only institute what they want.

Q I'll show you this item. (Hands document to witness.) Do you recognize this?

A I've seen something similar to that.

[76] Q Is that a document put out by the Concerned Citizens?

A Well I can't swear to it, but it's something similar to

that. It doesn't say anything about Concerned Citizens on it.

Q But I ask you, is this the document that your group put out?

A I can't swear to it. We put out some —

Q Do you disown that as being —

A I just saying it's a possibility that it is. No, I don't disown it, but I can't readily say that it is.

Q During the meeting what was meant by preparing a list of Uncle Toms?

A I think I said I don't remember having heard the statement of preparing a list of Uncle Toms.

Q Do you have a member in your group who's last name ends, I believe, is Phelps?

A She is a Concerned Citizen.

Q Were you present at the meeting in which she read off 26 names of people that had been followed and their license tags taken down and who were shopping in white merchant's, and formed this group to use enforcement tactics on them to prevent them from shopping? Were you present at that meeting?

A No.

[77] Q Were you present at the meeting when your leader Eddie McBride told the members of the group that when you find people that are shopping in white-owned stores to start calling them and harassing them at 4:00 and 5:00 in the mornings?

A I have never been in a meeting where such was said.

Q Have you heard any recordings of those meetings?

A Any records of the meetings, of the Concerned Citizens mass meeting?

Q Yes.

A Yes, I've had occasion to hear a couple of recordings.

Q And you never heard those type of items on recordings either?

A Never.

BY THE COURT:

Is there more than one group that is engaged in some kind of boycott, or if you want to say, selective buying, in Vicksburg?

BY THE WITNESS:

As far as I know, Your Honor, that's the only group, is Concerned Citizens.

BY THE COURT:

Concerned Citizens is the only group? There's not some church group in addition to that that is involved in the same activity?

[78] BY THE WITNESS:

No, they won't be. A lot of churches might be involved because they are members by nature by the fact that they are black and are concerned about the activities and conditions in Vicksburg. But except for a separate group I don't know of any.

BY THE COURT:

All right.

BY MR. ELLIS:

Q Now you had stated that when you were arrested you were arrested on an arrest warrant and that you were at home?

A Yes.

Q And the charge for which you were arrested was for conspiring with E. L. McBride and others to bring about a boycott of merchants?

A The only thing that was told me was that I was charged with criminal conspiracy and I was under an arrest.

Q And you have an attorney?

A Yes.

Q You checked into the affidavits?

BY MR. WINFIELD:

We object to that Your Honor, and the basis for my objection is that the attorney did check into it and there was no mention of anything violent in the [79] particular warrant that showed this man's name.

BY THE COURT:

Well I'm not going into that angle of it.

BY MR. WINFIELD:

Thank you, Your Honor.

BY MR. ELLIS:

Q So your arrest was on May 2, 1972?

A Yes.

Q Were you arrested the day before Mother's Day?

A No.

Q Were you on the main streets the day before Mother's Day?

A I'm not sure I understand.

Q Did you see any activities going on on Washington Street and in this district of town on Saturday, May 13?

A Yes I did.

Q Were you present for how long on the streets?

A I just drove down, went to the post office and back to the office.

Q But you were not participating in that group on May 17?

A I'm always participating in activities of Concerned Citizens, because first of all I'm black, and I'm interested in the welfare of black people in Vicksburg. [80] I may not have been on the street, but I'm always interested in the plight of black people here.

Q But you were not arrested and have not been arrested since May 2, 1972?

A No, I haven't.

Q And you are out on bond?

A Yes I am.

Q You are out on bond at this time?

BY THE COURT:

What kind of bond are you on?

BY THE WITNESS:

$5,000.

BY THE COURT:

Did you ask anybody to reduce that?

BY THE WITNESS:

The attorney dealt with that.

BY THE COURT:

All right.

BY MR. ELLIS:

Q How long were you in jail before you were able to meet that bond?

A Approximately two days.

Q You spent one night in jail?

A Yes.

Q Is that right?

[81] A Well, I think it was something like 36 or 37 hours.

Q You say you know E. L. McBride?

A Yes I do.

Q On the day of May 17, did you see him on Washington Street?

A I can't say I did or I can't say I didn't. I don't remember exactly what happened on May 17.

Q Did you notice him carrying a camera around his neck?

A No, I haven't noticed him carrying a camera.

Q What about binoculars?

A I've seen him in the office with binoculars.

Q With binoculars? Have you ever seen any pictures of black people carrying bags out of white-owned stores?

A No.

BY MR. ELLIS:

May we have the court's indulgence? That's all.

BY THE COURT:

All right. Any Questions?

BY MR. WINFIELD:

Yes, Your Honor.

RE-DIRECT EXAMINATION

BY MR. WINFIELD:

Q Mr. Ferguson, what relationship do you see as a member of the Board between the merchants in the [82] city and city officials, and the problems and grievances which you all have?

[82] BY MR. ELLIS:

I object to that, Your Honor.

BY THE COURT:

I'll let him answer.

BY MR. ELLIS:

We object to the form of the question.

BY THE COURT:

I'll let him answer.

BY THE WITNESS:

What relationship?

BY MR. WINFIELD:

Q Do you see on the part of the board the merchants and city officials has, what relationship do you see that they have with reference to grievances that the committee has, that Concerned Citizens has?

A The things that the black people of Vicksburg are asking for are in conjunction, basically in conjunction with both the city officials and the merchants; the activities of the merchants in not allowing more black people to work other than janitorial positions are uncalled for because there are sales people and managerial type peo-

ple in Vicksburg who are qualified and able to do a good job. Basically, [83] I think it's good business for businessmen to hire black people. In conjunction with the city, there are very few, two or three at the most, employed with the city; and yet black people in Vicksburg compiles more than 46 per cent of the population, and there are no black people other than janitors working in City Hall. I understand recently they might have had a clerk that has recently been hired, but there are no black people in the Civil Service force, there aren't any black people on the housing authority boards, at least there aren't any in decision making jobs.

BY THE COURT:

None on the police department?

BY THE WITNESS:

Yes, there are some blacks on the police department, and one of the demands was to establish a police review board, because white people, they have been getting injustice from both and black cops, and one of our demands is to deal with that situation.

BY THE COURT:

Do you all call those cops in Vicksburg Uncle Toms?

BY THE WITNESS:

I haven't witnessed any.

BY THE COURT:

[84] Let me ask you this, have you ever observed, or known of, or heard of, any violence in connection with your campaign that you are conducting over there in Vicksburg regardless of what you call it?

BY THE WITNESS:

I think the question was, have I heard of, or do I know of —

BY THE COURT:

Have you heard of or known of any violence of any kind either accomplished or asserted in connection with your program?

BY THE WITNESS:

No I haven't.

BY THE COURT:

Never have. All right.

BY MR. WINFIELD:

Q One other question, Mr. Ferguson. Do the members of the board make any attempt to negotiate a settlement in any way with the city, with the city and the merchants?

A Yes.

Q But there was nothing really worked out as far as you know?

A No goals, nothing worked out. A couple of days later, about a day and a half later, that's when [85] the arrests took place. When I was arrested at home and other members of the board, and a couple of other people who were arrested right after the meeting with the officials.

BY THE COURT:

Did your wife participate in this program?

BY THE WITNESS:

Did my wife participate in the program? Yes, she does.

BY THE COURT:
Did they arrest her?

BY THE WITNESS:
No.

BY MR. WINFIELD:
Q Mr. Ferguson, what do you hope to gain out of this, out of the activities of Concerned Citizens?

A I hope to see a better Vicksburg out of the efforts of the Concerned Citizens there. I hope to see better jobs, more jobs and better jobs, for black people. I'd like to see black people taking part in city government in terms of helping run a decent good city. I hope to see better housing. Just all around better economic conditions for everybody in Vicksburg.

Q Mr. Ferguson, did you happen to live out of the State [86] for any period of time?

A Yes I have. After I finished grad school my wife and I moved to New Jersey with the idea of making and saving money in order to come back to Mississippi in order to go into business. That was accomplished about a year ago when I moved back in order to establish my business in Vicksburg, because that was where I wanted to live. The primary reason I didn't come back after finishing graduate school is because I didn't have money and I needed to save some in order to do what I wanted to do.

Q But you want to make Vicksburg your home?

A I definitely do.

BY MR. WINFIELD:
We have no further questions.

(Witness Excused.)

BY MR. WINFIELD:

We would like to call Mr. Eddie Thomas.

EDDIE THOMAS,

called as a witness for and on behalf of Plaintiff, was sworn and testified as follows:

DIRECT EXAMINATION

BY MR. WINFIELD:

Q Will you tell the court your name please?

A My name is Eddie Thomas.

Q Mr. Thomas, where do you live?

[88] A I live at 2217 Latitia Street in Vicksburg, Mississippi.

Q How long have you lived in Vicksburg?

A I've lived in Vicksburg 26 years.

Q What kind of work do you do there, sir?

A I ran a barber shop.

Q Are you aware of the campaign of Concerned Citizens in Vicksburg?

A Yes, I am.

Q Have you been arrested at any time?

A No, I haven't.

Q There were a couple of incidents that we would like to draw your attention to; specifically, first one is on about May 21, I believe — were you with a one Albert Johnson near, or were you near the scene where an incident occurred between Mr. Albert Johnson and a Mr. James Sturgis?

A Yes, I was.

Q Can you tell the court in your own words just what took place there? If I may, Your Honor, that has to do with

the arrest of Albert Johnson. Will you tell the court in your own words what happened?

A I had drove down Washington Street heading south, and Albert Johnson was standing on Washington Street in the 1600 block. I waved at him and he asked me [88] where was I going, and I said, "Where do you want to go?" He came across the street and got in the car with me and he said, "Cliff, a fellow that drives a taxicab, was supposed to pick me up and I was supposed to ride around with him until time to go to the Mercy Hospital to visit my aunt, she's in the hospital." And I said, "Well, I've got a few minutes, I'll take you." We went around and went up Clay Street past a supermarket there that would be open on Sunday morning called Hep-U-Self. Then I drove on up to Openwood Street where a supermarket called Humpty-Dumpty. I spoke, I said, "Looks like a lot of people shopping here today." He said, "Yes, let's stop, I want to use the phone anyway." I pulled on the parking lot and stopped and he got out. When he approached the door to go by the door where the telephone was, Mr. Sturgis came out of the door, and they passed right by each other. Mr. Sturgis got in the car, his wife was sitting in the car, and he got in his car and pulled off, started up Openwood Street, which is northeast. He drove a few yards up Openwood Street then he stopped in the middle of the street and another car almost hit him from behind. His wife opened the door as if she was going to get out, and he must have said something to her, because she got [89] back in. Then he made a u-turn on the parking lot behind Humpty-Dumpty and came back up Openwood and parked on Humpty-Dumpty lot where he had left from.

BY THE COURT:

Just ask him some questions. He's talking on about

things that don't mean a thing in the world to me. I just want to find out about this lawsuit.

BY THE WITNESS:
Well, I'm right at the point of what happened.

BY THE COURT:
All Right.

BY THE WITNESS:
Then when he parked he jumped out of his car and Albert Johnson was standing there near the curb because he was fixin to cross the street. Mr. Sturgis walked up to Mr. Johnson and he called him Bouncer. He said, "Bouncer, are you looking for something?" He didn't say anything. Then he raised his hand and said, "If you want my tag number, or my house number, or my phone number, I'll give them to you, you don't have to come looking for me, I'll give them to you." Bouncer was still walking away from him, and he laughed. When he laughed his wife jumped out of the car, Mr. Sturgis' wife did; and when she jumped out of the car, she said, "You better not do nothing [90] to that car, you can laugh all you want to, but you better not do nothing to that car." Those were the words she used. Then Mr. Sturgis started repeating —

BY THE COURT:
Who is Sturgis?

BY THE WITNESS:
This is the man that signed the affidavit against Albert Johnson. He started repeating his home address, his phone number and his tag number, repeating them over and over. Mr. Johnson said, "I don't want your phone

number because you're our principal." He said, "I'm not your principal because you don't go to high school." He said, "That's right" and he came on across the street and got in the car with me. We drove off —

BY THE COURT:

Who got in the car with you?

BY THE WITNESS:

Albert Johnson. Mr. Sturgis and his wife got in their car and they drove off the same direction they started the first time up Openwood Street. I didn't hear anymore, that was all said there on the scene; and wasn't anything else said until I got a phone call about an hour and a half later. Said, "Mr. Bouncer, Mr. Albert Johnson said come to the jail house, Mr. Sturgis has [91] had him arrested." I said, "What's the charge?" Well, the person that called me didn't know, so —

BY THE COURT:

I don't want to hear any more of that. That's on the question of whether he's guilty or not, I'm not interested in none of that.

BY MR. WINFIELD:

Your Honor, the intent is to show the circumstances surrounding that more or less we just having something, just people committing acts —

BY THE COURT:

Go ahead file —

BY MR. WINFIELD:

Q Will you tell us about what you know about this buying campaign? Your barber shop is on Washington Street, is that right?

A Yes, it is.

Q So you have had an opportunity to observe some of the activities, some of the picketing and what have you. Have you ever seen anyone intimidate or threaten anyone?

A No, I haven't.

Q What about prior to the May 2 arrest, had you seen anyone threatened?

A I haven't seen anyone threatened. All I've seen is them walking the street with their picket signs with [92] different wordings on them.

Q On May 13, did you hear or see any disturbance in the city of Vicksburg?

A No, there wasn't any disturbance I knew about.

Q Are you aware that arrest were made?

A Right.

Q Do you feel the selective buying campaign, or boycott, if you care, is fairly effective?

A It was.

Q Have any merchants talked to you at all about it?

A Yes.

Q What was the nature of that, as far as you know?

BY MR. ELLIS:

We object to that.

BY THE COURT:

Sustained.

BY MR. WINFIELD:

Q Have you known of any efforts to end the selective buying campaign by Concerned Citizens?

BY MR. ELLIS:

We object to that, Your Honor.

BY THE COURT:

Sustained.

BY MR. WINFIELD:

Q Have you heard of any violence in the city of Vicksburg [93] associated with the selective buying campaign?

A No, I haven't.

Q Mr. Thomas, have you been attending the meetings?

A Yes, I've been attending regularly.

Q Have you appeared at any meeting where you heard an Uncle Tom list ran off, or any list of names of persons who had been shopping?

A I heard some individuals in the audience name some people they had seen shopping.

Q Did they have a list, or how was that done, you know?

A I don't know whether they did it orally or they had them written down, but I know they called some names of some people.

Q Was there one person who would stand up and read them or what occurred, as far as you know?

A Just different ones in the audience have stated some people that they had seen shopping downtown.

Q Is there any special time set aside for this, or is this just something that occurred?

A It's just when whoever is presiding asks if anybody has any comments or any statements to make.

Q Have you on any occasion heard Rev. McBride or anyone in charge at the meeting advocate the use of threats or violence?

A No, I haven't.

[94] BY MR. WINFIELD:

I think that's about it. That's all.

BY THE COURT:

What would be the reason or occasion for your attending these meetings? What would you be there for?

BY THE WITNESS:

Well, I be there because I am concerned or interested in whatever takes place in the city where I live.

BY THE COURT:

But you don't participate in a picket line?

BY THE WITNESS:

Oh, I have picketed, yes.

BY THE COURT:

All right.

CROSS EXAMINATION

BY MR. ELLIS:

Q You say you have picketed on occasions?

A Yes, I have.

Q Have you been arrested in Vicksburg since the boycott began in March of this year?

A No, I haven't. .

Q You're not under arrest now?

A No, I'm not.

[95] Q You're not under bond to any court?

A Not under bond.

Q Now, concerning Albert Johnson and the incident at the Humpty-Dumpty of a man named Sturgis, is he white or black?

A He's black.

Q Was he shopping in the Humpty-Dumpty?

A When we arrived he was coming out from Humpty-Dumpty. Whatever he did, he did it before we got there.

Q Did he have any bags in his hand?

A He had a small bag in his arm.

Q Is Humpty-Dumpty a white-owned business?

A Yes.

Q Had it been the subject of a boycott?

A Yes.

Q Are you familiar with the number of times that windows were broken in the Humpty-Dumpty grocery store during the boycott?

A No, I noticed in the paper one time. Once it was in the paper that a window was broken.

Q You have observed at least once that a window at the Humpty-Dumpty had been broken?

A Yes.

Q Albert Johnson, is he affiliated with Concerned Citizens?

[96] A As far as picketing, yes.

Q And for its enforcement tactics?

A I never knew of any enforcement tactics he would use.

Q When you parked your car on that day, was it in the parking lot of Humpty-Dumpty or across the street?

A It had two parking lots, one was on one side of the street and one was on the other, and I was on the right hand side going north.

Q On the other side of the street. Professor Sturgis, is he principal of one of the two high schools in the city of Vicksburg?

A He is.

Q And that was the man who made the complaint to the law enforcement authorities that led to the arrest of Mr. Albert Johnson for intimidating and coercing him in the prevention of him shopping in a business?

A They said he signed the affidavit.

Q Do you know Coach Marcum?

A Yes, I do.

Q Do you know where Coach Marcum lives?

A No, I do not.

Q Would it be true that he lives next door to Professor Sturgis?

A I don't know, I just met him on the street.

Q Are you aware of the fire bombing of Coach Marcum's [97] automobile during the night?

A I heard his car burned, I didn't know whether it was bombed or not.

Q At the meetings you have attended of the Concerned Citizens, did you hear the names of Professor Sturgis and Coach Marcum being mentioned as Uncle Tom's people who would not go along with the boycott?

A No.

Q Never heard —

A Not about Coach Marcum, no.

Q Were you in city court about four or five weeks ago when Albert Johnson was being tried on the charge of intimidating a black person by inflicting him with serious

bodily injury for shopping in a white-owned place of business?

A Yes, I was.

Q Were you in city court when a similar type charge was brought and on which Albert Johnson was found not guilty by the city court?

A Yes, I was.

Q Were you at the habeas corpus proceeding that was conducted in the circuit court of Warren County, Mississippi, approximately three weeks ago on which the bonds of those who were arrested were reduced to a lower amount by the circuit court?

[98] A Yes, I was.

Q Is it not true that these individuals who had petitioned the circuit court were already out under the reduced bonds when they appeared in court for the hearing on that Saturday morning?

A I'm not familiar with that part of it on whether they had been already reduced or whether they were being reduced.

Q How many spectators did the Concerned Citizens bring to their court proceeding?

A It was more than the courtroom would hold.

Q And the courtroom would hold about 550 people?

A I'm not sure how many it would hold. Concerned Citizens didn't bring them, the people just came.

Q Now on May 17, a Saturday, on Saturday about three weeks ago, were you on Washington Street when the picketing was going on?

A Yes, I was.

Q Did you observe the picketing?

A That I saw, yes.

Q Did you observe some of the picketers pulling peo-

ple out of the stores, black people who were shopping in the store?

A No, I didn't.

[99] BY THE COURT:

What was the question?

BY MR. ELLIS:

I asked him if he observed on the picketing that took place Saturday, I believe, May 17, if he observed picketers pulling black people out of the stores who were shopping.

BY THE WITNESS:

No, I didn't.

BY MR. ELLIS:

Q Did you go up and down Washington Street or stay at your place of business?

A I went all the way from China Street, that's about the 11th or 1000th block, back to the 1600th block, on both sides on two different occasions.

BY THE COURT:

What were you looking for?

BY THE WITNESS:

I was just looking at the people, observing what was going on.

BY THE COURT:

What day of the week was that?

BY THE WITNESS:

If we have the same day in mind, it was on a Saturday.

[100] BY MR. ELLIS:

Q That would be the day identified as the day before Mother's Day?

A That was on a Saturday.

Q And you were not participating in any organized effort to prevent people from shopping at white-owned places of business on that day, were you?

A No, I wasn't.

Q Do you have any specific grievance against any specific merchant in the city of Vicksburg?

A Not any specific one, no.

Q Are you aware that the A&P store in the city of Vicksburg is under boycott?

A All white-owned stores are in the selective buying campaign.

Q Are you aware that the manager or assistant manager of this A&P store is a black man?

A Yes, I am.

Q Are you aware that more than 40 per cent of the personnel employed in this A&P store are blacks?

A No, I'm not aware of that.

Q And I show you this item. (Hands item to witness.) Have you seen it before?

A Yes, I have.

Q Is it a document of the Concerned Citizens?

[101] A I'm not sure, but I've seen it before. Some youngsters were passing them out on the street and I got one of them, but wasn't any picketers passing them out.

BY MR. ELLIS:

We offer that for identification purposes.

BY THE COURT:

It may be marked for identification.

(Received for identification and marked Defendant's Exhibit #1.)

BY THE COURT:
Go ahead.

BY MR. ELLIS:
Q Now you had mentioned earlier, at the meetings of Concerned Citizens that names would be called out of people who shopped at —

BY MR. WINFIELD:
We would object to it as being in evidence.

BY THE COURT:
It is offered for identification. All right.

BY MR. ELLIS:
Q You had stated in direct testimony that during your attendance at the meetings of the Concerned Citizens that names would be called off by different people of black persons who were shopping during the boycott, [102] is that correct?
A That's correct.
Q And who was taking down these names?
A No one was taking down any names.
Q And these names that were being mentioned, did they coincide with the list that was being circulated among the black community, that an Uncle Tom list was being prepared to punish people who had shopped the places of the boycott?
A I never seen or heard of any such list.
Q What was being done about these names that were being called out?

A Just friends would know who their friends are, that's all.

Q Are you aware that after the names were being read at the meetings of the Concerned Citizens that some of these individuals had bricks thrown in their windows at night?

A I haven't heard of any.

Q And like Coach Marcum's automobile was set on fire?

A No, I didn't know his car was set on fire.

Q May I have the court's indulgence a second. (pause) How many people would you say were out on Washington Street picketing on Saturday before Mother's Day?

A Well, that morning I guess there was roughly 20 to [103] to 25 people, mothers.

Q Of course, there were no arrests made in the morning, is that correct?

A No arrests made in the morning.

Q And as a matter of fact after the picketing and the demonstration had taken place, it was some two hours later when there was mass picketing of over 100 people coming in the three-block area of Washington Street blocking the sidewalks and stores on which there were arrests.

A I didn't see the number that afternoon when they were arrested.

Q Do you know Mayor Charles Evers?

A Yes, I do.

Q Do you know attorney James Winfield?

A Yes, I do.

Q Do you know Welton Wardell?

A Yes, I do.

Q Did you observe them on television the night when Mayor Evers said that he had a right to discipline black

people who didn't go along with the boycott, and it was nobody's business but his how they would be punished?

A No, I didn't see that. I heard about it, but I didn't see it, see the news cast that night.

[104] Q But you heard about that.

A Yes.

Q And black people in the city of Vicksburg had heard threats that were made by Mayor Evers of interrogations to be taken against those that did not agree with the boycott, did you say?

BY MR. ALEXANDER:

Your Honor, we object, Mayor Evers is not a petitioner in this cause.

BY THE COURT:

Maybe he was an enforcing officer. Overruled.

BY MR. ELLIS:

Q And the black people in the city of Vicksburg are aware of the threats that Mayor Evers made in regards to these people who would not go along with the boycott, is that right?

A I didn't hear it, so I don't know whether he made a threat or not.

Q What I'm asking you is that the black people in the city of Vicksburg are aware that the threat was made over television and in the newspaper by Mayor Evers?

A What I read in the paper said the news reporter asked the question and he said he had ways of discipling their people, his people. Whatever discipling meant, it didn't sound like a threat to me.

[105] Q May I have the court's indulgence one moment please. (Pause) Would this not be the statement that you

referred to in questioning him about what action may be taken against the boycott. Mayor Evers said, "We have the right to discipline black people. The way we deal with them is our own business." Is that the statement you are referring to?

A That's the statement.

Q And who among the Concerned Citizens would carry cameras down Washington Street and take pictures of black people who were shopping in the white stores?

A You said who would do it?

Q Yes.

A Anyone that wanted to I guess.

Q And have you seen the leader of the boycott, Rev. McBride, have you seen him toting a camera around his neck and snapping pictures of black people who shopped in white-owned stores?

A I've seen him with a camera, I've never seen him snap anybody's picture.

Q You've never seen him snap anybody's picture?

A No.

Q This has been on more than one occasion, right?

A Most time he has binoculars, not a camera. Some people have mistaken them for a camera, but they are binoculars.

[106] Q Is he recognized as the leader of the boycott?

A Of the Concerned Citizens, yes.

Q The statement that Mayor Evers made on or about May 3 or 4, 1972, has that statement ever been repudiated?

BY MR. WINFIELD:

We object, Your Honor. This witness has no means at all to deal with whether or not that statement has been repudiated.

BY THE COURT:

Well he could just tell what he knows, if he knows he can tell, if he doesn't he can say so.

BY MR. ELLIS:

Q Has that statement ever been publically repudiated by the Concerned Citizens to notify the blacks in the city of Vicksburg that the enforcement tactics promised by Mayor Evers were not going to be used?

A Getting back to the meeting to answer your question; you see, I attend most of the meetings, and I never heard it state from the rostrum of the meeting from any of the leaders to use any forceful means to keep anybody out of the stores. All I've heard was use peaceful means. Just wear your picket sign and walk the picket line and don't say anything to anybody. Those were the instructions that were given out.

Q Are you aware that at the Colonial Shopping Center [107] at the Jitney Jungle Store there of the two black women, I forget their names right now, who were carrying out bags of groceries and which Albert Johnson and others chastised them for shopping at the grocery store and took the bag of groceries and threw it on the ground and broke it? Are you aware of that?

A I'd never even heard of that.

Q Never heard of it. Had you seen Rev. McBride and others connected with the Concerned Citizens taking down license tags of shoppers who were in this district of Vicksburg?

A No, I have not.

Q You have not?

A No.

Q Have you heard at the meetings that this was to be done so we'd know who to handle and who to treat in ac-

cordance with what Mayor Evers had lain down as a dictate to dealing with black people?

A No, I have not.

Q Do you agree that black people who disagree with you in carrying out the boycott should be intimidated and threatened by you and your group?

A No.

Q By Albert Johnson?

A No.

[108] Q Or by Rev. McBride?

A No.

Q Do you have any specific grievance against any specific merchant on which you are boycotting?

A Not as an individual, no.

Q You are boycotting against all white merchants because they are white people?

A No.

BY MR. ELLIS:

That's all the questions.

BY MR. WINFIELD:

Just a further question, Your Honor.

RE-DIRECT EXAMINATION

BY MR. WINFIELD:

Q Mr. Thomas, do you know if Mr. Evers has ever picketed in Vicksburg during the particular movement?

A No.

Q Do you know whether or not he has been designated or asked in any way to function as a leader or enforcer in the movement?

A No.

Q Have you personally heard of Mr. Evers making that statement with reference to the selective buying campaign?

A No.

[109] Q Have you conspired with anyone to violate any laws in the State of Mississippi?

A No.

Q Anybody in your family?

A No.

BY MR. ELLIS:

We object to that, Your Honor.

BY THE COURT:

Overruled.

BY MR. WINFIELD:

Q Have you known of anyone who has?

A No, I haven't.

Q Have you known of any violence, that is, anyone fighting of getting cut or shot, or anything of that nature to occur in Vicksburg since the beginning of, with reference to the boycott or selective buying campaign, since March 25?

A None whatsoever.

Q So you know of no charge other than the charge of criminal conspiracy and affidavits, several affidavits, by Mr. Sturgis; do you know of any incidents other than, any charges, other than criminal conspiracy charges and the charge against Albert Johnson and the charge by his niece?

A No, no other charges.

[110] BY MR. WINFIELD:
That's all.

BY THE COURT:
All right. Anything further?

BY MR. ELLIS:
No further questions.

(Witness Excused)

BY MR. WINFIELD:
Your Honor, we have, I know you've heard three, but we have one that we'd like to make very brief.

BY THE COURT:
All right, I'll let you. Go along.

BY MR. WINFIELD:
We call on Charles Chiplin.

CHARLES CHIPLIN,
called as a witness for and on behalf of Plaintiff, was sworn and testified as follows:

DIRECT EXAMINATION

BY MR. WINFIELD:
Q Will you tell the court your name, please?
A Charles K. Chiplin.
A Are you a Reverend?
A Yes, I am.
Q Mr. Chiplin, will you tell the court you've been arrested during the selective buying campaign?

A Yes, I have.

[111] Q Do you have any idea, roughly, you have been arrested, you were arrested on May 2, is that correct?

A This is correct.

Q Briefly tell the court what you were doing on May 2 when you were arrested.

A On May 2 I was walking up Washington Street with a picket sign, and an officer stopped me and said, "You are under arrest."

Q On May 13 were you arrested, Reverend?

A Yes, I was.

Q What were you doing at that time?

A On May 13, I was walking with a picket sign and was arrested.

Q Reverend, have you ever threatened anyone, coerced anyone, with reference to this particular movement, campaign?

A No, I have not.

Q Do you believe in strong-arm tactics in support of your movement?

A No, I do not.

Q Have you attended most of the meetings, Rev. Chiplin?

A With an exception of about two I have attended all.

Q Over a 10 or 11 week period?

A This is correct.

Q Have you had occasions to speak at these meetings?

[112] A Every night.

Q Will you tell the court briefly what is the nature of your participation at these meetings?

A Well, the nature of my participation in the meeting is that I feel that there needs to be something done to correct a wrong that has existed in the city over a period of time. I feel that as a minister it is my responsibility to my

fellow man to try to speak to them to this point, to try to convince people that they need to try to stick together now and accomplish these things, accomplish some of their human rights that God has given them.

Q What injustices are you talking about, briefly, that you were addressing yourself to when the group decided to picket, say in March?

A Injustices such as hiring practices, and above all, the fact that the courts had been unfair in many instances. The judge that we have on our —

BY THE COURT:

You mean if they don't decide like you want them to decide, that makes them unfair, does it?

BY THE WITNESS:

Not necessarily the way I want them to decide; I'm thinking in terms of legal aspects, of being, just showing justice, you know. I don't think that some [113] of the decisions rendered have been fair, not just —

BY THE COURT:

Let's get on with your questions, I'm not interested in his philosophy.

BY MR. WINFIELD:

Q Will you tell the court just what, do you recall at any time, had you at any time made any statements that could be drawn to mean that you were intimidating, that intimidation was to be used in the movement?

A No, I have not.

Q What about coercion?

A Not at all.

Q Have you intimidated anyone?

A No, I have not.

Q Have you known of anyone who's intimidated anyone?

A No, I have not.

BY THE COURT:

Have you got any charges pending against you?

BY THE WITNESS:

No, no more than criminal conspiracy.

BY THE COURT:

That's what I mean.

BY THE WITNESS:

Yes.

[114] BY THE COURT:

Criminal conspiracy pending against you?

BY THE WITNESS:

Yes, two charges.

BY MR. WINFIELD:

Q At the time you were arrested, were you pulling anyone out of the stores, were you talking to anyone who might have been buying in the stores?

A No, I was not.

Q Were you in a group at the time you were arrested? Were there more people picketing?

A There were some coming up the street behind me, yes.

Q Were they threatening or pulling anyone out of the stores?

A Not as I know of.

Q If there were reports, you would generally know, is that correct?

A That's right, I would know.

Q Had there been any reports or any information of persons, groceries being strown around, or people being beaten up or threatened in any manner?

A There had been none.

Q Have you attended any meetings, you are a member of the board, is that correct?

A I am a member of the board, secretary to the board.

[115] Q Have you attended any meetings with the city officials or merchants?

A I have attended two meetings.

Q Was the question of criminal conspiracy charges discussed at either of those two meetings?

A At the first meeting it was raised, yes.

Q What was the point there, what was said about that?

BY MR. ELLIS:

We object to that, Your Honor.

BY THE COURT:

Sustained.

BY MR. WINFIELD:

Your Honor, with reverence I'd like to (inaudible). As part of our showing, we intend to show that the charges are no more than harassment, and that the merchants could, but they were using this, the city, the merchants were using this to prevent people from simply picketing. And we would tend to show or argue that the arrests were

no more than harassment, that they were meant never to really carry them out.

BY THE COURT:

I'll let you touch on that, but it looks to me like you're going into the question of guilt or innocence. All right.

[116] BY MR. WINFIELD:

Q Were there any question or any statement by a merchant that they could throw out the charges if the boycott would end?

A There was a direct statement made in this first meeting concerning this. The question was raised that if the boycott would be called off, selective buying campaign, was called off —

BY MR. ELLIS:

Your Honor, we continue our objection to —

BY THE COURT:

I don't think that's got anything in the world to do with what's before me. I don't know whether this man is guilty or not guilty, I couldn't make a judgment on that. The question here is whether or not these people, individually or collectively, whether they are guilty of conspiracy in violation of a Mississippi statute.

BY MR. WINFIELD:

Q Mr. Chiplin, have you conspired with anyone, has the board, or the members, conspired to violate any laws of Mississippi; that is, to threaten or coerce to prevent people from doing business by using force or anything of the like?

[117] BY MR. ELLIS:
We object to that, Your Honor.

BY THE COURT:
I'll let him answer.

BY THE WITNESS:
No, I have not.

BY MR. WINFIELD:
Q Have you known of Rev. McBride or any members of the board, or anyone that's a member of Concerned Citizens, advocating that?
A No, I have not.
Q Were you at all times peacefull as far as while you were participating in it?
A At all times.
Q Had you known of anyone not to have been peaceful?
A I had not known of any such cases.
Q Have you heard Rev. McBride mention anything other than nonviolence and peaceful means to support the ultimate objective of Concerned Citizens?
A Never have I heard him say anything like this.
Q As far as you are concerned, is it unlawful now to picket in Vicksburg?

BY MR. ELLIS:
We object to that, Your Honor.

[118] BY MR. WINFIELD:
Your Honor, I think that is what may be heard, I believe that is part of it, that is the question.

BY THE COURT:

I'll let him say.

BY THE WITNESS:

As far as I know we cannot picket in Vicksburg now. It is against, we are arrested when we picket in Vicksburg now, so I would imagine it is against Vicksburg law.

BY MR. WINFIELD:

Q Why did you picket in the first place?

A I picketed because I felt it necessary that members of our race should restrain from trading in certain stores possibly until —

Q Let me interrupt, just tell why you decided to use picketing as a means of showing your grievances.

A Because I feel it's a constitutional right, and as far as I can remember, reading in school books and seeing (inaudible), people have picketed to voice their grievances against certain things. I felt it was my constitutional right and I was proud to wear a picket sign for my convictions.

Q And you thought this was a peaceful say of showing —

A I would not have participated had it not been a [119] peaceful way, I'm a minister.

BY MR. WINFIELD:

No further questions.

CROSS EXAMINATION

BY MR. ELLIS:

Q What is your name again?

A Rev. Charles K. Chiplin.

Q Do you have a brother by the name of James?

A I do.

Q Where is he employed?

A He's employed by the Vicksburg Police Department.

Q How long has he been with the Vicksburg Police Department?

A About six or seven years I imagine.

Q What rank does he hold with the Vicksburg Police Department?

A Just a policeman as far as I know.

Q Was he the one that placed you under arrest on May 2, 1972?

A Yes, he was.

Q That's your brother?

A That's my brother.

Q And he was in his police uniform?

A He was.

Q Is he an Uncle Tom?

[120] A Uncle Tom, no he's not an Uncle Tom.

Q Who are some Uncle Tom's in Vicksburg?

A From my sense of the word Uncle Tom —

BY MR. WINFIELD:

Your Honor, we object to this whole line of questioning. The question is calling for the witness to slander some individual in Vicksburg perhaps to that individual's interpretation. It's unnecessary.

BY THE COURT:

I'll let him answer.

BY THE WITNESS:

Well, it would all depend upon what is meant by Uncle

Tom. I don't have a list of people I call Uncle Tom's. I don't per se — there are people who I don't agree with their ideas at least according to the selective buying campaign — but I haven't labeled them as being Uncle Tom's per se. The word Uncle Tom, as you remember, came from the slavery period, and that had to do with a man who possibly snitched on his race, and I don't know who snitched.

BY MR. ELLIS:

Q You've been to most all of the Concerned Citizens meetings, is that right?

A That is true.

[121] Q And you are secretary of the Concerned Citizens?

A I am secretary.

Q And when the names of Uncle Tom's were being called off in the meetings you were the one taking the names?

A No, I had not taken any names down of Uncle Toms.

Q What is the lady's name who's last name ends with Phelps? What's her first name?

A Mrs. Marcina A. Phelps.

Q Were you present at the meeting during the month of April in which she read off 26 names of Uncle Toms for retaliation by the group in attendance at that meeting?

A I was at a meeting, but I do not recall any such reading.

Q What type of business is your mother in?

A She owns a grocery store.

Q Has her business increased substantially since the boycott was put into effect in March of 1972?

A Somewhat. We've always done very good business

on that corner. It's in the main stream section of town, the black section.

Q As a matter of fact, her business has increased substantially, is that right?

A I wouldn't say substantially, but somewhat increased.

Q Are you aware that within the last ten days that she [122] procured two Small Business Administration loans?

BY MR. WINFIELD:

We object to that, Your Honor, it has no relevance at all to this inquiry.

BY THE COURT:

Sustained.

BY MR. ELLIS:

Q Now, do you know Professor Sturgis?

A Yes, I do.

Q And he's the principal of which school in Vicksburg?

A North Vicksburg High School.

Q Is he a black man?

A Yes, he is.

Q Is he on the Uncle Tom list?

A I don't know of any Uncle Tom list that you would be speaking of.

Q What about his next-door neighbor, Coach Marcum?

A In what respect?

Q Is he on the Uncle Tom list?

A I've never known of an Uncle Tom list, I haven't seen a list of Uncle Toms.

Q Are you aware that his automobile was fire bombed

in front of his home several days after his name was mentioned in Concerned Citizens?

A I was informed that his automobile was burned, the [123] inside was burned.

Q And that was several days after his name was mentioned by someone in the Concerned Citizens?

A I have not heard his name mentioned in a meeting, no more than after his car was burned, we said how terrible it was and encouraged people — not that anyone from our group did so — but encouraged people in general not to use any tactics like that. In fact, I don't feel like it's related to the movement at all, I feel like it's totally disconnected from the movement. He's a coach and he's lost a lot of games this year.

Q Is that why his automobile was burned?

A I don't know, there could be so many reasons.

Q How far is his place of business from your mother's store?

A His place of business?

Q Excuse me, his residence.

A I would say about a good three blocks, two or three blocks.

Q Do you remember the three youngsters that were placed in front of Gibson's Discount Store, or Howard Brothers' Discount Store, by you and a woman who's last name, I believe, is Washington?

A Three youngsters?

[124] Q Yes. Back in the month of April.

A No, I do not remember them.

Q Did you appear in city court when they, when one of the three were charged with obstructing traffic and blocking people from entering Howard Brothers' Discount Store? Were you in the city court when that case came up for trial?

A Yes, I was.

Q You was? And I ask you also, on a Saturday in April, were you and a woman, I believe, by the name of Williams, were out in front of the Jitney-Jungle store in the highway demonstrating and you were arrested for obstructing traffic?

A That day Mrs. Williams and I were picketing.

Q In the highway?

A Not in the highway. When we stepped onto the highway we had on no picket signs, so we were not picketing in the highway.

Q And after you were brought to jail you were released on a $25 bond, is that not right?

A That's true.

Q And the woman also?

A Yes, she was.

Q Then about an hour later you and I believe the woman and about 10 or 12 other people went back with signs [125] and go in the highway picketing and were again arrested by the Highway Patrol.

A We returned to the area and did not get back in the highway and were arrested, yes, sir.

Q And those cases came up for hearing in the justice of the peace court, is that not right?

A We did not actually appear in court, no.

Q Let me ask you this question: did your attorney enter a guilty plea for you on those two occasions, and the woman on the two occasions, and the other two people, to obstructing traffic, and paid a small fine in the justice of the peace court?

A This is true, yes.

Q Now, on the picketing that took place on Mother's Day eve, were you on Washington Street that day?

A Yes, I was.

Q What time did the demonstration take place?

A Between 10:00 and 11:00 that morning, I imagine, the first of such demonstrations.

Q Was it observed by the Police Department?

A Yes, it was.

Q Were there any arrests made right away?

A No, there were not.

Q And the group that was demonstrating on the street, did they leave and stay away for about an hour, hour [126] and a half, and then returned?

A We went for dinner, yes.

Q Went for dinner. And then when you returned, was there a larger number of people with picket signs?

A No, there was not a larger number.

Q Did these pickets take up guards at different businesses and chase black people out of the businesses?

A No, we don't stop in fact, we don't take guards, we don't chase people out of any businesses. We were walking up the street.

Q Do you know Albert Johnson?

A Yes, I do.

Q Have you ever walked the streets with Albert Johnson?

A No, I have not.

Q You have not?

A No.

Q Have you heard of black people complaining about the enforcement tactics advertised by Mayor Evers that was being used by Albert Johnson and others in your group?

A No, I don't, and I don't know of any enforcement tactics used by Mayor Evers.

Q Did you hear the statement that he made on television that the blacks who organized the boycotting had a

right to discipline other blacks who didn't agree [127] with them, and it wasn't anybody else's business?

A I may have been in jail at that time.

BY THE COURT:

Who was sponsoring that program that Mayor Evers appeared on?

BY THE WITNESS:

I don't know, I didn't see the program. As I say, I was in jail as I recall when it came on.

BY MR. ELLIS:

Q Now, Rev. Chiplin, prior to that time had Mayor Evers been to Vicksburg and spoke to yall's meeting?

A He had spoken once, I believe.

Q He had spoken once at the meeting. And others had spoken calling for a boycott and calling people Uncle Toms who didn't agree with you, is that right?

A No, nothing to this effect.

Q Have you ever walked the streets with Rev. Eddie McBride?

A Maybe twice.

Q Did he have the camera with him on either of those occasions?

A No, he didn't.

Q Did he have his binoculars with him?

A No, he didn't. He had a sign on him saying "God is with us."

[128] Q All right, but you never have seen him with the pictures that he's taken of people who were shopping?

A No, I haven't seen any pictures of anyone who was shopping.

Q Do you condone the acts of Rev. McBride as being a

part and partial, a part of what you want to accomplish in carrying out the boycott?

A As far as I know and have observed Rev. McBride, I would say that his actions are in keeping with my (inaudible).

Q So you are saying that you agree with the actions taken by Rev. McBride and Albert Johnson to enforce the boycott?

A As far as, if you have the same reference to actions taken, I mean, the only actions I know are peaceful, and, yes, I agree with those, yes.

Q So what they do is being done with your acquiescence?

A What they are doing, yes.

Q How many people were in the group with you when you were arrested on the day before Mother's Day?

A There may have been about, between 13 and 15, something like this, I'm not sure of the actual number. I understand that there were two groups arrested, and I was in the first group.

Q And they had a big crowd gathered at the intersection [129] where you were arrested?

A They could not help but gather. The police blocked the streets off and caused a big commotion, they had four or five cars there with the lights flashing. The man told me to put my hands up beside the post like I'd killed somebody.

Q Were your people standing out in the streets?

A No, they were not standing in the streets.

Q How many of your people were around?

A The closest person, there were about two people closer to me and there were others back down the street further. We had just left the office and I had crossed the street; in fact, we were not up far enough to have the whole

line of 12 or 13 people fully on the street, so as the others turned the corner they were arrested.

Q Was Albert Johnson in the group?

A I don't recall him being in that group.

Q Who in the group was trying to get the blacks out of the white stores, as you recall?

A No one in the group tried to get anybody out of any stores.

Q What about those pamphlets that yall were passing around that called people Uncle Tom and prepare a list of people that didn't go along with the boycott?

A Pamphlets that called people Uncle Tom?

[130] Q Yes.

A We have had no such pamphlets that call people Uncle Tom.

Q That call people Uncle Toms?

A No such pamphlet that called people by the name Uncle Tom.

Q What I mean were making threats to identify people that they were Uncle Toms.

A That may be possibilities of identifying people as Uncle Toms?

Q Yes.

A I have seen several of those, yes.

Q And when these people's names were being mentioned, it was in connection with them being spotted as shopping in white-owned stores, is that correct?

A I'll go back to say that I have not heard names mentioned. I don't recall names, maybe they were mentioned and I didn't hear them, but I have not heard any names called.

BY MR. ELLIS:

May I have the court's indulgence.

BY THE COURT:
All right.

BY MR. ELLIS:
Q At the meetings of Concerned Citizens, you were the master of ceremonies?
[131] A Yes.
Q Do you recall the Saturday when the courthouse was blocked off and the streets of the courthouse were blocked off so you could hold a meeting there?
A Yes.
Q And this was done after the arrest of May 2?
A Yes, it was.
Q And you were the master of ceremonies at that meeting?
A That's true.
Q And the city afforded you an opportunity to have a meeting on the courthouse steps and to block off the streets so people could attend and listen to what you wanted to say?
A Yes, they did.
Q And the meeting lasted for some several hours, is that not right?
A Yes, it did.
Q And Rev. McBride and others spoke there, is that not right?
A This is right.

BY MR. ELLIS:
That's all.

BY THE COURT:
Anything further?

[132] BY MR. WINFIELD:
Nothing further.

(Witness Excused)

BY MR. WINFIELD:
Your Honor, that concludes all the witnesses we have had come over here, and we feel that we have substantially, we have put on —

BY THE COURT:
You're satisfied with it?

BY MR. ALEXANDER:
Yes, Your Honor, except for oral argument.

BY THE COURT:
That's right, I understand that. Let's take a ten minute recess.

(Court recessed at 3:25 P.M. for ten minutes, after which the hearing of this cause was then resumed.)

BY MR. ELLIS:
We call Chief Brown.

MARION R. BROWN,
called as a witness for and on behalf of Defendant, was sworn and testified as follows:

DIRECT EXAMINATION

BY MR. ELLIS:
Q Would you state your name for the court?

A Marion R. Brown.

Q And do you hold a position with the city of Vicksburg?

[133] A I do, sir.

Q What position?

A Chief of Police.

Q How long have you been with the Vicksburg Police Department?

A A little over 18 years.

Q How long have you filled the capacity as Chief of Police?

A A little over four years.

Q Are you presently the Chief of Police?

A I am, sir.

Q And have been particularly during the months of March, April and May 1972?

A Yes, sir.

Q Chief Brown, I ask you to direct your attention to the arrests made on May 2, 1972. Were they made on affidavits filed with the Police Department?

A They were, sir.

Q And were they based on investigation of the Police Department?

A They were.

Q Charging conspiracy and restraining trade.

A Right.

Q And particularly the witness by the name of John E. Ferguson, 30 year old black male. Was he arrested [134] on that day?

A He was, sir.

Q And that was the only time that he had been arrested?

A Yes, sir.

Q And the witness, Eddie Thomas, has he ever been placed under arrest?

A No, sir.

Q Now, as to Albert Johnson on the charges of intimidating the complainant James Sturgis, how was that matter brought to the attention of the Police Department?

A The matter was brought by a complaint from Mr. Sturgis that he had been threatened and intimidated by Mr. Johnson at the Humpty-Dumpty grocery store on this particular date.

Q Now for the benefit of the record, Mr. Sturgis is the black principal of one of the high school in the city of Vicksburg?

A North Vicksburg High School.

Q Did it involve threats on account of him shopping at the Humpty-Dumpty or a white business establishment in the city of Vicksburg?

A It did, sir.

Q And were charges brought based on this complaint in the county court of Warren County, Mississippi?

A Yes, sir.

[135] Q Was Albert Johnson brought on for trial with a jury sitting in the courtroom waiting to be selected to stand trial on the charges brought through the complaints of Mr. Sturgis?

A Yes, sir.

BY MR. WINFIELD:

Your Honor, we would like to object to the line of questioning, it deals with activities that the Chief did not personally observe. The question of whether or not the Chief personally observed what he's testifying to; was he present to see a jury?

BY THE COURT:

Well he's sworn to tell the truth, the whole truth, and nothing but the truth of his own knowledge. I overrule the objection.

BY MR. ELLIS:

Q Was the trial of Albert Johnson on the charges against, or rather, brought on the complaint of Pro. Sturgis stopped before they were able to commence?

A Yes, sir.

Q And was that on account of notification of a legal petition that had been filed in the federal district court?

A Yes, sir.

Q Chief Brown, I direct your attention to approximately [136] a week or ten days after the arrest on May 2, 1972. Did the Concerned Citizens or any of the group request permission from you as Chief of Police for use of the facilities of the courthouse and to block off the street area for the purpose of holding a public meeting?

A They did, sir.

Q Was permission granted?

A It was.

Q Were the streets blocked off pursuant to their request by the Police Department?

A Yes, sir.

Q Was the meeting conducted on the front steps of the courthouse?

A Yes, sir.

Q Was it attended by a number of people?

A Yes, sir.

Q Would you estimate the size of the crowd.

A I'd say around 800 people.

Q Was the Rev. Charles Chiplin a moderator or speaker at that meeting?

A He was.

Q Was defendant Eddie McBride, Rev. Eddie McBride, a speaker at that meeting?

A He did, sir.

Q Was that meeting conducted within hearing distance [137] of the law enforcement officers?

A Yes, sir.

Q Were promises made to continue the restraint of trade and to retaliate against blacks who were violating the boycott?

A They were.

BY THE COURT:

Let me get that question again.

BY MR. ELLIS:

I asked him at that meeting were remarks made by the speakers to continue the boycott in restraint of trade and to retaliate and take notice against those blacks who did not go along with the boycott.

Q And what was your answer to the question, please?

A They were.

Q Now, Chief, approximately one week after that mass meeting that was conducted on the steps of the courthouse and in the street to the courthouse, was picketing resumed on Washington Street?

A It was, sir.

Q When did you first notice the picketing activity on this particular Saturday, which I believe was the day before Mother's Day?

A At approximately 11:00 A.M. Saturday morning.

Q And did you personally go down at that time to observe [138] the nature in which the picketing was being conducted?

A I did, sir.

Q At that time did you find the picketing being conducted peacefully and without any violence or intimidating anyone?

A It was, sir.

Q At that time did you find that it was not interfering with the rights of any people to go in and out of the stores?

A They weren't interfering with people going in, the only interference that I saw at all this particular morning was they caused the sidewalk to be somewhat congested; but I didn't say anything to them or none of my men, we let them continue. They kept moving and they walked from one end of the street to the other several times, about 35 people.

Q Now after they had made the demonstration by walking the length of the business district of Washington Street from one end to the other, did the group then disburse?

A Yes, sir.

Q Did you notice any violations of the law in the way they conducted the picketing at that time between 11:00 and 11:30 or however long it was that they first began to picket?

[139] A No, sir.

Q Were any arrests made from the original picketing?

A No, sir.

Q How much later that day was it that you received, or did you receive any complaints later that day in regards to activities being carried on by certain people in furtherance of the boycott?

A I did receive some complaints.

Q And what were the nature of the complaints received?

A That the picketers were interfering with people try-

ing to go into stores, that they had actually gone into stores, some of them had, and told people in the presence of the owner that they weren't suppose to be in the store shopping.

BY MR. WINFIELD:

Your Honor, we are going to have to object to that testimony, because we will admit that can testify that he received a complaint, but I feel that the witness is going beyond what he actually observed or what knowledge he received.

BY THE COURT:

You can tell only what you know of your own knowledge, Chief.

BY THE WITNESS:

Yes, sir.

[140] BY MR. ELLIS:

Q Now, Chief, did you receive complaints from people concerning the activities that took place later that afternoon by the boycotters?

A Yes, sir.

Q And did this lead to an investigation of this activity by the Vicksburg Police Department?

A Right.

BY MR. WINFIELD:

Your Honor, at this time I'd like to interpose another objection. It appears that counsel is leading.

BY THE COURT:

Yes, don't lead him. Is it against the law to peacefully picket in Vicksburg?

BY THE WITNESS:

No, sir.

BY MR. ELLIS:

Q About what time of the day was it that the Police Department commenced an investigation to see what nature the picketing was taking?

A It was I believe just a little after 1:00 that afternoon.

Q Now, Chief Brown, was an observation made by the Vicksburg Police Department of the conduct of the [141] picketers prior to arrest?

A Yes, sir.

Q And what were they doing?

A They were stopping people, talking to them; they were blocking some entrances to the stores. I personally saw them follow people back to their cars, write their tag numbers down. I personally saw them even go as far as to reach out and stop people, and I heard several —

BY THE COURT:

Reach out and do what?

BY THE WITNESS:

Stop people, just reach out and stop a person that would have a package in his hand. I heard Albert Johnson, I heard James Chiplin, and several others, Victor Parsons, tell people that they were not suppose to be downtown shopping that there was a boycott on.

BY MR. ELLIS:

Q Now, Chief, prior to the arrest being made, were warnings given to quit interfering with people?

A They were, sir.

Q Did they cease interfering with people from going into the stores?

A They did for about 25 or 30 minutes. They left and [142] went back up on Grove Street to 717 Grove Street, which was the office of the Concerned Citizens. Then in about 25 or 30 minutes they came back on the street and started again, then that's when they were arrested.

Q You say they started again, were they interfering with the people at the time they were arrested?

A They were, sir.

Q Chief, I show you here an item that's been marked for identification purpose #1, do you recognize it?

A Yes, sir.

Q What is it?

A That's a list of demands, I believe this is the first list that I originally saw; I believe this was the day before the boycott actually started, I believe the boycott started March 24.

Q Are any of the complaints made on there directed to any merchant in the city of Vicksburg?

A I don't believe so.

Q And, Chief, I ask you, did the boycott start the day after receipt of that notice from, by the Chamber of Commerce from the Concerned Citizens?

A Yes, sir.

BY MR. ELLIS:

Your Honor, we offer this as an exhibit to the Chief's testimony.

[143] (Document previously received for identification now received in evidence, and bears Defendant's Exhibit #1 as so labeled.)

BY MR. ELLIS:

Q Now, Chief, I show you another item. Do you recognize it?

A Yes, sir.

Q And what is it?

A Uh —

Q Let me ask you this way: who's leaflet or pamphlet is it?

A This leaflet was being handed out by members of the Concerned Citizens on the streets of Vicksburg.

Q Do they mention Uncle Tom in that list?

A Yes, sir.

Q What mention do they make of Uncle Toms in that list?

A It says: And still there are some Uncle Toms among us. There are some black people right here in the city who have decided to remain on the bottom. You need not smile because it is not comical, rather it's sad. The selective buying campaign is still on. Keep your money in your pocket, we are going to begin publishing a list of Uncle Toms. See to it that your name does not make our list.

Q Chief, that was the pamphlet or leaflet circulated [144] by the Concerned Citizens?

A Yes, sir.

BY MR. ELLIS:

We offer this as an exhibit to the Chief's testimony.

BY THE COURT:

It may be entered and be marked.

(Received in evidence and marked Defendant's Exhibit #2.)

BY MR. ELLIS:

Q Chief, had you received reports from any black citizens in the city of Vicksburg in regards to terrorisms or brutalities being practiced upon them because they did not agree with the boycott?

A Yes, sir.

Q Were there any bricks being thrown in the windows at night?

A Yes, sir.

Q Now, I ask you to direct your attention to a case in which one of the Concerned Citizens filed an affidavit against a black policeman in the city of Vicksburg, and when that case came up for trial did several black women testify on behalf of the black police officer in the city court?

A They did, sir.

BY MR. WINFIELD:

Your Honor, we would like to state an objection to [145] this line of questioning. It is irrelevant to the question involved.

BY THE COURT:

What is the relevance?

BY MR. ELLIS:

We're going to show that these people had tried to go into a wrestling match in the city of Vicksburg and were being stopped from going into it, and they were testifying in court about it that they received bricks being thrown in their windows during the dead of the night.

BY THE COURT:

I don't believe that's relevant to what we're trying here. These people are not charged are they?

BY MR. ELLIS:

Not charged, no, sir.

BY THE COURT:

All right, sustain the objection.

BY MR. ELLIS:

Q Now, Chief, I ask you this: at the time that the picketing started on Mother's Day eve, that was done under observation by the Vicksburg Police Department?

A Yes, sir.

Q And I believe you stated, I want to make sure of this, that at the first 45 minutes or an hour before [146] the picketers disbursed, there were no arrests made, is that correct?

A Yes, that's correct.

Q And why were there no arrests made during the first hour of picketing?

A They didn't interfere with anybody or violate any law that I know of.

Q Chief, you stated that several hours later that groups of these people and others reappeared on the streets in Vicksburg.

A Right.

Q Why were they arrested?

A They were interfering with people, they were down —

BY MR. WINFIELD:

Your Honor, if we may, it appears that on direct here counsel is repeating himself.

BY THE COURT:

Speak up.

BY MR. WINFIELD:

It appears that counsel is being redundant in his questioning, he's already asked that question several times.

BY THE COURT:

I'm not aware of it; overruled; go along.

[147] BY MR. ELLIS:

Q Chief, on the second occasion, which was after an hour and a half or two hours from the first demonstrations that were being conducted on the business district, why were they arrested the second time?

A They were interfering with people that were attempting to trade in the downtown stores in Vicksburg. They were stopping people; I got complaints from people on being threatened.

Q In other words, they were violating the laws and they were arrested, Chief?

A Right.

BY MR. ELLIS:

May we have the court's indulgence. We tenure the witness, Your Honor.

BY THE COURT:

All right.

BY MR. WINFIELD:

Q Chief Brown, on direct examination you testified you had been on the police force over 18 years, is that correct, sir?

A Right, sir.

Q And you have been Chief more than four years.

A Right, sir.

[148] Q Have you been involved in mass arrests before?

A No, sir, not mass arrests.

Q Let me direct your attention to your testimony with reference to the May 13 arrests. Did you not testify that there were complaints?

A There were, sir.

Q What were the complaints?

A I received several calls from merchants that the pickets were interfering with people trying to trade in their stores.

Q What do you think is the object of the pickets, sir?

A What is the object of the pickets?

BY MR. ELLIS:

We object to that, Your Honor.

BY THE COURT:

I'll let him answer. Go ahead, sir.

BY THE WITNESS:

The object of the pickets has been different on certain occasions. Certain occasions they have been peaceful, then there have been other occasions, Your Honor, that they haven't been peaceful. Their object as they have so

stated publically is a boycott against the white merchants in the city of Vicksburg.

BY MR. WINFIELD:

Q Chief Brown, have you had a complaint against a [149] Mrs. Fannie Brown?

A Mrs. Fannie Brown? I don't recall having a personal complaint against her, no, sir.

Q Do you understand the charges that have been placed against these people — criminal conspiracy, that is?

A Yes, sir.

Q You understand that that's a serious charge?

A Yes, sir.

Q Now can you tell the court who actually made those affidavits out?

A Who actually made the affidavits?

Q Who went before the justice of the peace or the judge?

BY MR. ELLIS:

Your Honor, we object to that; the affidavits speak for themselves.

BY THE COURT:

I'll let him answer that. I don't know why they haven't been offered in evidence. I'll let him answer that.

BY THE WITNESS:

I personally, with the help of the county attorney and the district attorney, helped prepare the affidavits.

BY MR. WINFIELD:

Q On the case of Fannie Brown, did you go before the [150] justice of the peace?

A Mr. Winfield, there were quite a number of people named in each affidavit; I don't recall which one Mrs. Brown is actually named in. But I went before on all affidavits.

Q And the charge of conspiracy against Bennie Young, did you go before the justice of the peace, and what was your complaint, who was your complaint?

A All of the people so charged in these affidavits, Mr. Winfield, were involved, that were arrested, were involved in this particular incident down on the streets of the city of Vicksburg in the particular date they are named in the affidavits.

Q My question is: what was their involvement, that is the question.

A What was their involvement? I didn't personally observe —

BY MR. ELLIS:

We object if Your Honor please, that's going into the guilt or innocence.

BY THE COURT:

I sustain the objection.

BY MR. WINFIELD:

Your Honor, we would intend to show that at the time of the, the question is directed to just what were [151] they, that they were actually picketing, that they were doing no more than picketing.

BY THE COURT:

I'm not interested in the affidavits, whether they are guilty or not guilty or what's charged in the affidavits; but you can show what they were doing if he remembers.

Counsel, you may be seated, I don't let but one counsel conduct a trial.

BY MR. WINFIELD:

Q Can you tell the court what activity any of the petitioners were engaged in at the time they were arrested — May 2, May 13, May 14?

A What were they doing when they were arrested? Is that the question?

Q Right, sir.

A They were downtown interfering with people as I so stated before. I actually observed these people before any arrests were made on this particular date of the 13th. Stopping people, writing down tag numbers. In general, harassing people who were down there trying to trade.

Q Chief Brown, who did you see write down tag numbers?

A I saw Rev. Chiplin, Victor Parsons, and I don't know all of them personally, but I —

Q All of them were walking around with signs writing —

[152] BY THE COURT:

Let him finish his answer.

BY THE WITNESS:

It was during, since the boycott started. I have observed many of the picketers take their placards that they had tied around their necks, just take a pin and walk up, follow people to their automobiles, and write their tag number down on the placard.

BY MR. WINFIELD:

Q Was that a violent act?

A Well —

BY THE COURT:

You don't need to argue too much about that, I have my own ideas about that. Don't kid yourself up here, because you ain't fooling me a bit. Go along.

BY MR. WINFIELD:

Q Chief Brown, is that unlawful? What is your understanding?

A Mr. Winfield, when, I can only answer you this way: I have received numerous complaints from black people, some I know and some I don't know, that have been followed back to their automobiles, their tag number written down, that have reported to me that since this has happened they have been called at their homes all hours of the night and threatened, and told what [153] was going to happen to them if they didn't stop shopping in downtown Vicksburg with white merchants in the city of Vicksburg. That's the only answer I can give you to it.

Q My question would be this then, Chief Brown, do you have any information as to particularly the petitioners that are charged committing any of the acts, if in fact these acts occurred?

A No, I don't know. The only complaint I actually have where a person actually identified themselves, so the complainant told me he identified himself. Mr. Jeff Prentiss said that the Rev. McBride had called him several times and wanted him to come before, come to the meeting before the people at the meeting, so he could straighten him out. Mr. Prentiss' statement to me was that what brought this on was he spoke against Mr. McBride in his church which he's senior deacon in his church, and he spoke against him using the church for this purpose. He said that he had had 25 to 30 phone calls of threats and then that the Rev. McBride did identify

himself and wanted him to come to the meeting so he could straighten him out.

Q Did you accept that as being a threat, or did it appear to what he said that that was a threat when he asked him to come before the mass meeting to discuss [154] the matter of what have you?

A I don't know what he intended to do at this meeting unless it was to intimidate the man, get him before a crowd of people.

Q Was that particular incident used as part of your information that you drew up that you took to the justice, police justice?

A Not on that particular date, no, sir.

BY THE COURT:

Chief, did you have anything to do with the arrest of Johnny James Ferguson?

BY THE WITNESS:

Johnny James Ferguson. I didn't actually participate in any of the arrests, Your Honor.

BY THE COURT:

He's in some kind of entertainment business over in Vicksburg.

BY THE WITNESS:

He's manager of Great Southern Productions.

BY THE COURT:

Something like that.

BY THE WITNESS:

Yes, sir.

BY THE COURT:

Do you know what he was arrested for and accused with?

[155] BY THE WITNESS:

He was arrested, I believe, on May 2, with the first group that was arrested. He has actually participated in the boycott, and in fact, at the beginning he was very actively participating in it.

BY THE COURT:

He said he was at home when he was arrested.

BY THE WITNESS:

Yes, sir. Some of the first arrests, they were not all on the street. We had made this affidavit of, I believe, 16 or 17 people that were actively leading and doing most of the intimidating and so forth. The date we made the arrests it was raining, some of them were on the street, some of them were not.

BY THE COURT:

All right.

BY MR. WINFIELD:

Q Do you not know of any intimidation that Mr. Ferguson —

A The only thing I've seen him, I've seen him actually carry a picket sign, I've seen him stopping people on the street and talking to them.

Q Was that unlawful?

A No, there's nothing unlawful about stopping a person and talking.

Q You were the person, you made out the affidavits on those original 16, is that correct?

[156] A Right.

Q Chief Brown, do you know a David McFelton? Do you know of David McFelton?

A I know of a McFelton.

Q Do you know the lady that works in the city jail by the name of McFelton, she cooks?

A I know the cook, yes sir.

Q Do you understand that Mr. McFelton is a petitioner in this case?

A I do, sir.

Q Have you ever arrested Mr. McFelton?

A I have not.

Q Has the sheriff arrested Mr. McFelton?

A No, sir.

Q Do you understand why there are criminal conspiracy charges against him?

A I know that Mr. McFelton at one time was very actively participating in the boycott, was taking a very active part in it, but I have not seen Mr. McFelton since the first arrests were made. There were also others named in that first affidavit that disappeared the day those arrests were made and did not reappear on the streets or take another part in this boycott until the second group of arrests were made.

Q Are you saying then that the fact that they did not [157] reappear on the streets was the reason why they were not arrested?

A I did not go out and spend a lot of time, our time was quite consumed in this matter. I did not go out and make a lot of special effort to find these people after they disappeared. The sheriff did go to his house in Ford Subdivision, that's north, he lived out of the city limits in Vicks-

burg, on several occasions and they never did find him at home.

Q Do you recall a Mr. Willie Green, charges made against Mr. Willie Green?

A Yes, sir.

Q Do you know where he lives?

A He lives within the city somewhere, I believe.

Q Has he been arrested since May 2?

A No, sir.

Q Has he been back on the streets?

A I have not seen him.

Q Is it not a fact that all persons who have been on the streets since May 2 with picket signs, with the exception of that short march on May 13, have been arrested?

A No, actually there were some left down there on May 13 earlier that I don't believe were arrested.

Q Did they have picket signs?

[158] A They removed their picket signs and left.

Q So the reason why they were arrested was because they had their picket signs on them?

A No, the reason why they were arrested, Mr. Winfield, was that they were interfering with the people downtown.

Q Chief Brown, have you met with any merchants prior to the arrests on May 2 to discuss this matter?

A I have attended quite a few meetings, Mr. Winfield.

Q Did yall discuss ways and means of ending this boycott or selective buying campaign?

A There were quite a few discussions on how to talk with these people and reason with them. I understand, I haven't been in any meetings with the Concerned Citizens myself, but I know that there were some meetings.

Q I mean in reference to the meetings that the merchants had, that you attended with the merchants.

A I attended some, yes, sir.

Q That was prior to the May 2 arrests?

A Yes, sir.

Q What was the decision there?

A What was the decision of which, Mr. Winfield?

Q What was the decision to deal —

BY MR. ELLIS:

We object to that, Your Honor.

[159] BY THE COURT:

I'll let him answer that.

BY MR. ELLIS:

Q What was the decision as means of dealing with — (pause) Did you understand my question, sir?

A Sir?

Q What was the decision made there as how to deal with the boycott?

A Actually the merchants didn't make any decisions on what was to be done; they certainly were discussed, but the final decision, after about five weeks that this boycott had actually gone on, was made by myself, the district attorney, and the county attorney.

Q Chief, when a crime, when a normal crime, of say; shop lifting, murder, or the like, is committed, do you meet with merchants before you make arrests?

A No, sir.

BY MR. ELLIS:

We object to that, Your Honor.

BY THE COURT:
Sustained.

BY MR. WINFIELD:
Excuse me just a moment.

BY THE COURT:
Let me ask you this, Chief, if these colored people [160] are unhappy about something and they want to picket on Washington Street, I believe that's the main thoroughfare, isn't it?

BY THE WITNESS:
Yes, sir.

BY THE COURT:
And carry pickets or banners, or whatever you want to call them, and march say, a couple of feet, on the sidewalk and not interfer with the traffic, pedestrian traffic, or not make a nuisance of themselves by any improper remarks to people, and not interfer with people that are going in or coming out of the stores, would the city of Vicksburg be offended by such conduct, or would it seek to arrest them?

BY THE WITNESS:
No, sir, I wouldn't arrest them as long as they conducted themselves in a proper manner, Your Honor.

BY THE COURT:
Does the city of Vicksburg really, or honestly, and sincerely intend to prosecute these cases, or were they filed here just for intimidation and harassment?

BY THE WITNESS:
We intend to prosecute them, Your Honor.

BY THE COURT:
So there's a good faith effort on your part?

[161] BY THE WITNESS:
Yes, sir.

BY THE COURT:
Do you honestly feel like that they have violated some law and you feel like they should be vindicated?

BY THE WITNESS:
Right.

BY THE COURT:
All right.

BY MR. WINFIELD:
Q Chief Brown, again I ask, what was your personal observation on May 14 when the arrests occurred?
A Mr. Winfield, I was at home when the arrests were made May 14.
Q What charges were levied then?
A Same charges.
Q And what was that charge?
A Criminal conspiracy.
Q What was that based, was that based on a warranty?
A There were no warranties at the time they were arrested, sir.
Q What basis did you make the arrests?
A I did not make the arrests.

Q As far as you know as Chief of Police, on what basis were the arrests made?

[162] A The same basis that the others were arrested on. They were doing the same things in front of several different stores that were opened Sunday.

Q Each person arrested was committing what act?

A It was criminal conspiracy, sir.

Q I mean, what act?

A They were stopping, preventing people from going in and shopping at these stores.

Q By having their picket sign on, sir?

A Not just for having the picket signs on, they were stopping people as I have stated before. Capt. Baker, Capt. Cochran (sic), and Sgt. Hearn actually made the arrests on the 14th.

Q How many charges of criminal conspiracy do you have?

A I don't know the exact number.

Q Do you know whether or not there have been any preliminary hearings on these matters?

A No, sir.

BY MR. WINFIELD:

That's all our questions.

BY THE COURT:

I've been very much interested in some or, some of the witnesses here who have said they didn't have any particular objection to some of the merchants, it was all of them in particular. I was thinking [163] about that in terms of it being a crime, a common law to conduct a secondary boycott. I was in a case like that one time, and I'm interested in that phase of it, whether or not; their testimony, some of these witnesses, that they don't just

put themselves right squarely in the teeth of the common law on the subject of secondary boycott by what they said. I just throw that out for counsel.

BY MR. WINFIELD:

Well, Your Honor, we are of the opinion there are a whole line of cases in this Fifth Circuit, particularly the case of Dorcy V. State, the case of, there are several open cases in this district who cited the question of the right to march, picket, what have you, that would not preclude the question of secondary boycott. That these persons were there engaged in their civil rights activities along with their, those other requirements of violating the law, intimidation, and what have you.

BY THE COURT:

There's no question in the world about a person having the right to peacefully picket, but I'm not thinking about that. I'm thinking about whether or not these people have got a right to engage in activities in furtherance of their peaceful picketing and by way [164] of intimidation of customers who violate their instructions which these leaders give at these churches. They have a meeting in churches and go right on the street and engage in violence.

BY MR. WINFIELD:

Well, Your Honor, it is our opinion that no such intimidations or coercion have taken place at all.

BY THE COURT:

Well, I mean that's what the testimonies to that point and is susceptible of construction at this point.

BY MR. WINFIELD:

Q I believe I asked you the question, Chief, were you present on the 14th during the arrests and you stated that you were not.

A No, I was not.

Q But you did sign the affidavits in those?

A Yes, sir.

Q Were you personally present on the 13th?

A I was.

Q The arrest of Rev. McBride?

A I was not when the arrest actually took place, I was at the police station.

BY THE COURT:

Is Rev. McBride a petitioner here?

[165] BY THE WITNESS:

Yes, sir.

BY MR. WINFIELD:

Q Were you there when Tom Whitaker was arrested?

A I was at the police station when all the arrests were made, except on the 14th, and I was home.

BY MR. WINFIELD:

No further questions.

BY MR. ELLIS:

No further questions.

(Witness Excused)

BY MR. ELLIS:
The State rests, Your Honor.

TRIAL EXHIBIT D-1

March 23, 1972

Vicksburg Chamber of Commerce
Vicksburg, Mississippi 39180

To Whom It May Concern:

In response to the invitation to the Executive Committee of Concerned Citizens of Vicksburg to attend a meeting of the Vicksburg Chamber of Commerce, we respectfully decline all such invitations until the following demands are met:

1. Dismissal of Judge Oscar LaBarre

2. Demotion of Captain Coulter

3. Impeachment of John Ellis — District Attorney

4. Discharge of the two (one) white policemen who were responsible for the beating of Mr. Neal Antoine

5. Hiring 40% Blacks in City Government jobs at all levels

6. Hiring at least two Black reporters for the city newspaper.

7. Hiring 40% Blacks on Urban Renewal staff at all levels

8. Restore the name of all previous Black schools

9. Enforcement of present housing code in the city

10. Creation of a civilian police review board

11. End all police harrassment of Black people

12. The immediate release of Lamar Burk and the two juveniles who were arrested on March 23, 1972

Black Concerned Citizens of Vicksburg

The Opinion of the District Court is omitted in this Appendix. The opinion of the District Court is reproduced in the Appendix to the printed Petition for Certiorari, Appendix D, pp. 15a-25a.

[55] ORDER TO REMAND

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

(Number and Title Omitted)

Filed: Jan. 4, 1973

The above cause having been removed to this Court and respondents having made and filed in this Court a Motion to have the cause remanded and the Court having heard and considered testimony and evidence offered, it is ORDERED by the Court, that the case of Albert Johnson be remanded to the County Court of Warren County, Mississippi and all other cases included in the Removal Petition be remanded to the Municipal Court of Vicksburg, Mississippi, from which they were removed by the Petition for Removal filed herewith, upon the ground that said cause was removed improvidently and without jurisdiction; and it is further ORDERED that the Clerk of this Court furnish the Clerk of said State Courts with an attested or certified copy of this Order. Petitioners are hereby assessed with all costs of this proceeding to be taxed by the Clerk of this Court according to law.

ORDERED this 4th day of January, 1973.

/s/ WILLIAM HAROLD COX
UNITED STATES
DISTRICT JUDGE

October 31, 1973

Honorable Edward Wadsworth, Clerk
United States Court of Appeals
for the Fifth Circuit
600 Camp Street
New Orleans, Louisiana 70130

Re: Albert Johnson, et al
v.
State of Mississippi
No. 73-1476

Dear Mr. Wadsworth:

During oral argument in the above-styled cause on October 29, 1973, the Court, speaking through Judge Godbold, directed counsel for the respondents to obtain certain supplemental information regarding the status of the petitioners in the state courts of Mississippi.

Enclosed you will find in letter form, as directed, the information requested by the Court which is signed by those individuals who have the authority to speak in such matters.

If we can be of any further assistance to the Court, please let us know.

Sincerely yours,

EDNjr:bs
Enclosure
cc: Frank Parker, Esq.

Ed Davis Noble, Jr.
Special Assistant
Attorney General

OFFICE OF THE DISTRICT ATTORNEY
Ninth Circuit Court District
[EMBLEM]
P.O. Box 628
Vicksburg, Mississippi 39180

October 30, 1973

Hon. David W. Dyer
Circuit Judge
United States Court of Appeals
for the Fifth Circuit
600 Camp Street
New Orleans, Louisiana

Hon. John C. Godbold
Circuit Judge
United States Court of Appeals
for the Fifth Circuit
600 Camp Street
New Orleans, Louisiana

Hon. Thomas G. Gee
Circuit Judge
United States Court of Appeals
for the Fifth Circuit
600 Camp Street
New Orleans, Louisiana

Re: Albert Johnson, et al
vs.
State of Mississippi
Case No. 73-1476

Dear Judges Dyer, Godbold and Gee:

Pursuant to the direction of the bench during oral argument in the above styled cause as District Attorney for the Ninth Circuit Court District of the State of Mississippi which includes Warren County the following information is herewith submitted regarding the individuals charged on May 2, 1972 and May 13 and 14, 1972 who were the subject of the removal action in Johnson, et al vs. State of Mississippi.

The March 1973 Grand Jury convened on March 12 and during this regular session of the Grand Jury considered the matters of the 49 individuals charged on certain Affidavits regarding alleged violations of Section 2056; 2059.1; 2059.2; and 2059.3 of the Mississippi Code of 1942 as amended (Supplement 1972). The Grand Jury while in session "no billed" the cases against the following individuals:

Maude Winfield; David McPhelp; Robert Whittaker Lee; Michael Sims; Terry Robinson; Robert Whittaker, John Dillard; Betty Washington; Katie Mae Clark Lawrence; Connie Williams; Willie Green; Victor Parson; Bennie Young; Ben Perkins; Daniel Walton; Wallace Williams; Mary Helen Lee; Fannie Brown; Mildred C. Cosey; Albert Ross; Alora Larkins; William Rooks; Joseph Wright; Mattie Mae Jones; Louise Thomas; Rosa Lee Shields; Mary F. Robb; J. B. Edwards, Jr.; Ray M. Cosby; Larry Sims; Bertha Williams; Dellora Bosly; Willie Mae Ferguson; Frankie Young; Rudy L. Smith; Jennette Canda; Willie Mae Jones; Abraham Green, Jr.; Robert

Johnson; Tommy Whitaker; Johnnie Williams; Rufus Price; and Jessie Mae Green.

At the same session of the March 1973 Grand Jury a true bill of indictment was returned against Albert Johnson; Eddie McBride; John Ferguson; Charles Chiplin; Issac Rembert and James Odell Dixon.

The 43 individuals whose cases were "no billed" by the March Grand Jury have been concluded and it is the intention of the Office of District Attorney and the Warren County Prosecuting Attorney not to further proceed against these individuals at a future date regarding the charges brought before the March 1973 Grand Jury which resulted in the no bill. These 43 individuals and the sureties on their appearance bond have been relieved of any further liability thereon by virtue of the action taken by the March 1973 Grand Jury.

With regards to the remaining six individuals who were indicted by the March 1973 Grand Jury it is of course our intention in all good faith to continue the prosecution of that indictment to the extent afforded by the statutes of the State of Mississippi.

Very Truly Yours,
/s/ JOHN E. ELLIS
DISTRICT ATTORNEY
/s/ GEO. CHANEY
COUNTY ATTORNEY

STATE OF MISSISSIPPI
WARREN COUNTY

CIRCUIT COURT March
TERM, 1973

The Grand Jurors of the State of Mississippi, elected, summoned, empaneled, sworn and charged to inquire in and for the body of Warren County, State of Mississippi, at the term aforesaid, in the name and by the authority of the State of Mississippi, upon their oaths present that Albert Johnson, Eddie McBride, John Ferguson, Charles Chiplin, Issac Rembert and James Odell Dixon, late of the County aforesaid, on or before the 12th day of March, A.D., 1973 with force and arms, in the County aforesaid, and within the jurisdiction of this Court did then and there with the felonious intent on their part and each of them with the other to promote, encourage and enforce an unlawful boycott of business establishments in the City of Vicksburg, did knowing, wilfully, unlawfully and feloniously conspire, confederate, agree, combine and scheme among themselves and each with the other, to unlawfully and feloniously prevent black persons from trading or doing business with merchants of the City of Vicksburg, to-wit: all merchants of the white race and business establishments owned or operated by persons of the white race, and among said merchants being Whitney Stores, Inc. doing business as Graysons; United Dollar Store, Inc.; F. W. Woolworth Co. and A & P Tea Co. #125 and divers other merchants of the white or caucasian race in said city which said conspiracy was formed and effecutuated because of alleged grievances of said conspirators over which the merchants and places of business was directed had no direct control or legal authority

to correct, said alleged grievances being, dismissal of the City Judge demotion of Captain Coulter, impeachment of the District Attorney, discharge of the two policemen who were responsible for the beating of Mr. Neal Antoine; hiring 40% Blacks in City Government jobs at all levels; hiring at least two Black reporters for the city newspapers; hiring 40% Blacks on Urban Renewal staff at all levels; restore the name of all previous Black schools; enforcement of present housing code in the city; creation of a civilian police review board; end all police harrassment of Black people; the immediate release of Lamont Burk and the two juveniles who were arrested on March 23, 1972, Contrary to the statute in such cases made and provided, and against the peace and dignity of the State of Mississippi.

/s/ JOHN E. ELLIS
District Attorney

The opinion of the Court of Appeals and the order of the Court of Appeals denying the petition for rehearing en banc and the dissenting opinion are omitted from this Appendix. They are reproduced in the Appendix to the printed Petition for Certiorari, Appendices A and B, pp. 1a-13a. The judgment of the Court of Appeals appears at Appendix C of the printed Petition, p. 14a.

APR 12 1974
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1531

ALBERT JOHNSON, REV. EDDIE MCBRIDE, JOHN FERGUSON, CHARLES CHIPLIN, ISSAC REMBERT, and JAMES ODELL DIXON,

Petitioners,

versus

STATE OF MISSISSIPPI,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

ALIX H. SANDERS
FRANK R. PARKER
Lawyers' Committee for
Civil Rights Under Law
233 North Farish Street
Jackson, Mississippi 39201
JAMES E. WINFIELD
125-1/2 North Farish Street
Jackson, Mississippi 39201

Attorneys for Petitioners

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S. Rep. No. 721, 90th Cong., 2d Sess, 1968 U.S. Code Cong. & Admin. News, vol. 2, ... 14, 15

Note, *Federal Jurisdiction: The Civil Rights Removal Statute Revisited,* 1967 Duke L.J. 136 14

J. Bentham, PRINCIPLES OF MORALS AND LEGISLATION, (Oxford ed 1879) 16

W. Hohfeld, FUNDAMENTAL LEGAL CONCEPTIONS (1919) 16

J. Salmond, JURISPRUDENCE (7th ed. 1924) 16

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1973

No.

ALBERT JOHNSON, REV. EDDIE MCBRIDE, JOHN FERGUSON, CHARLES CHIPLIN, ISSAC REMBERT, and JAMES ODELL DIXON,
Petitioners,

versus

STATE OF MISSISSIPPI,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered on January 14, 1974.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 488 F.2d 284 and is set forth in the Appendix. The order of the Court of Appeals denying the petition for rehearing and rehearing en banc and the dissenting

opinion of Chief Judge Brown joined by four other judges is unreported and also is set forth in the Appendix. The opinion of the United States District Court for the Southern District of Mississippi is unreported and is included in the Appendix.

JURISDICTION

The judgment of the Court of Appeals for the Fifth Circuit was entered on January 14, 1974. Petitioners' timely petition for a rehearing en banc was denied on March 15, 1974, and this petition is being filed within 90 days of that date. By order of Circuit Judge David W. Dyer, Jr., dated April 1, 1974, the issuance of the mandate of the Court of Appeals was stayed for 30 days to permit filing of this petition. This Court's jurisdiction is invoked pursuant to 28 U.S.C. §1254 (1).

QUESTIONS PRESENTED

Whether under *Georgia* v. *Rachel,* 384 U.S. 780 (1966), petitioners may remove the criminal prosecutions against them to Federal court pursuant to the civil rights removal statute, 28 U.S.C. §1443(1), to protect their exercise of rights specifically protected from official interference by Title I of the Civil Rights Act of 1968, 18 U.S.C. §245(b).

STATUTORY PROVISIONS INVOLVED

1. 28 U.S.C. §1443(1) provides:

§1443. Civil rights cases

Any of the following civil actions or criminal prosecutions, commenced in a State Court

may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:

(1) 'Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons wihin the jurisdiction thereof; . . .

2. 18 U.S.C. § 245(b) (§ 101(a) of the Civil Rights Act of April 11, 1968) provides:

§ 245. Federally protected activities

* * *

(b) Whoever, whether or not acting under color of law, by force or threat of force willfully injuries, intimidates or interferes with, or attempts to injure, intimidate or interfere with —

(2) any person because of his race [or] color, * * * and because he is or has been —

(B) participating in or enjoying any benefit, service, privilege, program, facility or activity provided or administered by any State or subdivision thereof;

(C) applying for or enjoying employment, or any prerequisite thereof, by any private employer or any agency of any

State or subdivision thereof, or joining or using the services or advantages of any labor organization, hiring hall, or employment agency;

* * *

(F) enjoying the goods, services, facilities, privileges, advantages, or accommodations of any inn, hotel, motel, or other establishment which provides lodging to transient guests, or of any restaurant, cafeteria, lunchroom, lunch counter, soda fountain or other facility which serves the public and which is principally engaged in selling food or beverages for consumption on the premises, or of any gasoline station, or of any motion picture house, theater, concert hall, sports arena, stadium, or any other place of exhibition of entertainment which serves the public, or of any other establishment which serves the public and (i) which is located within the premises of which is physically located any of the aforesaid establishments, and (ii) which holds itself out as serving patrons of such establishments: or

* * *

(4) any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from —

(A) participating, without discrimination on account of race [or] color, * * * in any of the benefits or activities described in subparagraphs (1)(A) through (1)(E) or subparagraphs (2) (A) through (2) (F) or (B) affording another person or class of persons opportunity of protection to so participate; or

(5) any citizen because he is or has been, or in order to intimidate such citizen or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination on account of race [or] color * * * in any of the benefits or activities described in subparagraphs (1) and (A) through (1) (E) or subparagraphs (2) (A) through (2) (F), or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate —

shall be fined not more than $1,000, or imprisoned not more than one year, or both; and if bodily injury results shall be fined not more than $10,000, or imprisoned not more than ten years, or both; and if death results shall be subject to imprisonment for any term of years or for life.

STATEMENT OF THE CASE

Petitioners are six black residents of Vicksburg, Mississippi, who in March through May, 1972, participated peacefully in speech and peaceful assembly,

through protest marches, demonstrations and a boycott, to eliminate racial discrimination and to publicize the grievances of black citizens of Vicksburg. Determined to end unlawful private and public racial discrimination in their home town of Vicksburg, petitioners helped organize and participated in (1) a primary boycott of local businesses for the purpose of gaining equal treatment and equal employment opportunities in the downtown stores, and (2) peaceful picketing, leafleting, and protest marches protesting racial discrimination in employment and services in city government and its agencies, and to publicize other civil rights grievances, all of which are specifically enumerated in 18 U.S.C. §245(b).

Picketing and leafleting began in late March, 1972, and continued until early May when 49 civil rights demonstrators, including the six petitioners, were forcibly arrested, jailed, and charged not with any violent acts, but under constitutionally vague and overbroad arrest affidavits with criminal restraint of trade and criminal conspiracy in restraint of trade allegedly in violation of Miss. Code Ann. § 97-1-1(f) (1972). Most of the demonstrators, including several of the petitioners, were arrested while picketing and carrying signs protesting racial discrimination, and the remainder were arrested because of their participation in civil rights protest activities.[1]

---

[1]The spuriousness and harassing purpose of the charges against the civil rights demonstrators is shown by the fact that prior to the appeal in this case, the grand jury returned no true bills against 43 of the 49 arrested demonstrators (488 F.2d at 285, n. 3). On appeal, the State abandoned its trial court claim that

These arrests broke the back of the civil rights protest movement and ended the picketing. In their verified petition for removal filed pursuant to 28 U.S.C. § 1443(1), petitioners alleged that they were engaged in activities specifically protected from official interference by 18 U.S.C. § 245(b) and that the criminal charges against them have no basis in fact and were brought solely and exclusively for the purpose and effect of interfering, by force and threat of force, with the exercise by petitioners of rights specifically protected against official interference by 18 U.S.C. § 245 (b).[2]

District Judge Harold Cox of the Southern District of Mississippi remanded the cases back to the state court on January 4, 1973. On appeal, the Fifth Circuit recognized (1) that petitioners have a Federally protected right peacefully to engage in civil rights protest activity free from official interference: "At the

---

the prosecutions were predicated on Miss. Code Ann. § 97-1-1 (1972), and contrary to the language of the arrest affidavits represented to the Fifth Circuit that the arrests were predicated on Miss. Code Ann. § 97-23-85 (1972) (secondary boycott) and § 97-23-83 (1972) (threats and coercion), but the Record in the trial court is devoid of any direct evidence that any of these petitioners committed any unlawful acts under these statutes.

[2]Simultaneously, the petitioners also sought injunctive relief against the prosecutions in a companion § 1983 action, *Concerned Citizens of Vicksburg* v. *Sills*, Civil No. 72W-18(N) (S.D. Miss. filed May 24, 1972), but the District Court denied temporary injunctive relief which would hold the prosecutions in status quo pending a final hearing (Order of May 26, 1972). A final hearing in that action has not yet been held, and is not part of this appeal.

outset, we note that there is no question of appellants' right to engage in peaceful picketing" (488 F.2d at 286); (2) that petitioners' civil rights protest activity was protected by the civil rights statute invoked: "§ 245 . . . forbids certain forms of harassment such as the bringing of spurious criminal charges" (id. at 287); and (3) that the statutory predicate for removal invoked by petitioners (§245(b)) on its face "clearly deals with equal civil rights" (Id. at 286).

However, the Court of Appeals affirmed the remand order of the District Court, and denied removal, on the ground that the statute invoked does not come within the removal requirement that petitioners must be denied or cannot enforce "a right under any law providing for the equal civil rights of citizens" (§ 1443 (1)):

> "While a variety of acts which interfere with the exercise of civil rights are made criminal by § 245, that statute confers no rights whatsoever. When compared to the 'model' of 1866 cited by the Supreme Court in *Rachel*, and to the laws since held to be within § 1443(1), § 245 cannot be characterized as a law which *provides* for the equal civil rights of citizens." 488 F.2d at 287.

The petition for rehearing was denied by the full court (10-5), Chief Judge John R. Brown joined by four other judges, dissenting on the grounds that:

"First, the issue is of recurring transcendent importance. Second, the panel's decision in my opinion is doubtful if not erroneous.

* * *

"It is my opinion that the panel improperly concluded that § 245 is not a law providing for the equal civil rights of citizens within the meaning of the removal statute. The restrictive interpretation applied to § 245 refuses appellants their "right" to peacefully protest racial discrimination free from the harassment of bad-faith prosecutions inspired by their activities.

> Such a right is, of course, provided for and guaranteed under the First Amendment. While Rachel [Georgia v. Rachel, 384 U.S. 780, 86 S.Ct. 1783, 16 L.Ed.2d 925] teaches that the broad protection afforded all citizens by the Constitution precludes the characterization of any of its provisions as a "law providing for equal civil rights" within the meaning of § 1443(1), § 245(b) (5) nevertheless provides unique, specific protection — phrased in terms of race — for the First Amendment right to protest segregation. Consequently it is a law providing for equal civil rights, satisfying the requirements of the civil rights removal statute.

* * * *

> In both its purpose (preventing unwarranted interference with the exercise of Federally protected equal civil rights) and the scope of its prohibition (against attempted injury, intimidation or interference by force or threat of force) § 245(b) is indistinguishable from the relevant provisions of the 1964 Civil Rights Act held sufficient to support removal jurisdiction in Rachel.

Perkins v. Mississippi, 5 Cir., 1972, 455 F.2d 7, 42-43 (Brown, C.J., dissenting)."

REASONS FOR GRANTING THE WRIT

I. Certiorari Should Be Granted Because the Decision of the Court of Appeals Conflicts with, and Seriously Undermines the Protections Afforded the Exercise of Civil Rights By, This Court's Decision in Georgia v. Rachel, 384 U.S. 780 (1966).

This Court in the landmark case of *Georgia* v. *Rachel*, 384 U.S. 780 (1966), and the companion case of *City of Greenwood* v. *Peacock*, 384 U.S. 808 (1966), broadened the scope of civil rights removal protections when it held that removal of criminal prosecutions is justified not only when a black criminal defendant cannot obtain a fair trial in state courts because of a discriminatory state statute affecting procedure which conflicts with some pre-emptive Federal equal civil rights law, cf. *Strauder* v. *West Virgin-*

ia, 100 U.S. 303 (1880), but also when the criminal prosecution itself is instituted and carried through in total disregard of a Federal equal civil rights law which authorizes the black defendant to engage in the activity for which he is being prosecuted and directs Federal courts and officers to protect him in the enjoyment of his Federally-secured equality.

In those cases this Court held that criminal prosecutions may be removed to Federal Court for dismissal when two requirements, both of which are satisfied here, are met: civil rights removal must be sustained when petitioners have shown (1) that "the prosecution stems exclusively from the petitioners' peaceful exercise" of rights (*Peacock*, 384 U.S. at 824) (2) under any Federal law "providing for specific civil rights stated in terms of racial equality" (*Rachel*, 384 U.S. at 792).

In *Peacock* the civil rights demonstrators failed in their removal effort because at the time there was no pre-emptive Federal equal civil rights law providing for specific civil rights stated in terms of racial equality which expressly protected their conduct from official interference. The Court held that the First Amendment rights asserted must be protected by means other than civil rights removal. But in 1968 Congress specifically recognized and sanctioned the importance of civil rights protest as a vehicle for beneficial social change by enacting Title I of the Civil Rights Act of 1968, 18 U.S.C. § 245(b), which specifically prohibits acts or attempts by State officials which injure, intimidate, or interfere with

> "(5) any citizen because he is or has been, or in order to intimidate such citizen or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination on account of race, color, religion or national origin, in any of the benefits or activities described in subparagraphs (1) (A) through (1) (E) or subparagraphs (2) (A) through (2) (F), or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate —"

and specifically refers to protest of discrimination in employment, private and public (§ 245(b) (2) (C), and in government services (§ 245(b) (2) (B)), the precise goals of petitioners' protest demonstrations.

The Fifth Circuit recognized that both requirements of *Rachel* and *Peacock* were met in this case. That court conceded in its opinion that petitioners had a right to engage in peaceful picketing, that the right to participate lawfully in speech or peaceful assembly opposing any denial of the enumerated rights was specifically protected against official interference by § 245(b) (5), that § 245(b) forbids harassment and intimidation of the rights of civil rights protest conferred by that section including "the bringing of spurious criminal charges," and that the section invoked "clearly deals with equal civil rights."

But the Fifth Circuit seriously misread and came into conflict with this Court's opinions in *Rachel* and *Peacock*, however, when it compared the statute in-

voked here with the statutes enumerated in *Rachel* and *Peacock*, particularly 42 U.S.C. §§ 1981 and 1982, and Title II of the Civil Rights Act of 1964, 42 U.S.C. § 2000a, and determined that those statutes "bestowed" and "granted" specific rights to racial equality, but that § 245(b) as a criminal statute "confers no rights whatsoever."

This Court in *Rachel* specifically guarded against restricting civil rights removal protections to the Reconstruction statutes when it determined that:

> "Congress' choice of the open-ended phrase 'any law providing for . . . equal civil rights' was clearly appropriate to permit removal in cases involving 'a right under' both existing *and future statutes* that provided for equal civil rights.
>
> * * *
>
> On the basis of the historical material that is available, we conclude that the phrase 'any law providing for . . . equal civil rights' must be construed to mean *any law* providing for specific civil rights stated in terms of racial equality" 384 U.S. at 789-90, 792 (emphasis added).

Further, this Court in *Peacock* also warned against limiting the application of civil rights removal exclusively to the statutes invoked in those cases when it advised that:

> "A precise definition of the limitations of the phrase 'any law providing for . . . equal civil rights' in § 1443(1) is not a matter we need pursue to a conclusion . . ." 384 U.S. at 825.

Contrary to the majority of the Court of Appeals, there is nothing in *Rachel* or *Peacock* holding that rights secured by a civil rights criminal statute may not be protected by removal. The case law, the purpose of the statute, and reason are to the contrary. This Court held in the earliest removal cases that a criminal statute punishing racial discrimination in jury selection, Act of March 1, 1875, ch. 114, § 4, 18 Stat. (Pt. 3) 336, now codified as 18 U.S.C. § 243 (and therefore, at least in the United States Code, a companion statute to the one invoked here), provided rights which could be protected by removal of criminal prosecutions in *Gibson* v. *Mississippi*, 162 U.S. 565, 580 (1896); *Neal* v. *Delaware*, 103 U.S. 370, 385-86 (1881); and *Virginia* v. *Rives*, 100 U.S. 313, 321 (1880). See Note, *Federal Jurisdiction: The Civil Rights Removal Statute Revisited*, 1967 Duke L.J. 136, 154, n. 90.

As Chief Judge Brown points out in his dissent, the legislative history of § 245(b) indicates that it was designed for the benefit and protection of civil rights demonstrators:

> "The bill would protect persons who urge or aid participation in the protected activities, as well as those who engage in speech or peaceful assembly opposing denial of the opportunity to so participate." S. Rep. No. 721, 90th Cong., 2d

> Sess., 1968 U.S. Code Cong. & Admin. News, vol. 2, p. 1839.

The legislative history also makes clear, contrary to the holding of the Court of Appeals, that the statute was designed to provide a "right" to be free of interference:

> "H.R. 2516 meets this need [for legislation which spells out clearly what kinds of conduct are prohibited] by spelling out the kinds of activity to be protected, and the bill provides an effective means of deterring and punishing forcible interference with the exercise of Federal *rights*." Id. at 1841 (emphasis added).[3]

And therefore following this Court's analysis in *Allen* v. *State Bd. of Elections*, 393 U.S. 544, 554-58 (1969) (Voting Rights Act), "[i]t is consistent with the broad purpose of the Act to allow the individual citizen standing" (id. at 557) to enforce his rights under it, and to deny such a right clearly frustrates the Congressional purpose.[4]

Simple reason tells us that it makes no sense to dispose of the issue presented "by the panel's sweeping

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[3]This is a typical passage, chosen at random. The notion that the statute is designed to protect the "rights" of black people and civil rights workers and demonstrators appears on almost every page of the Senate Report (majority report).

[4]§ 245(b) was held to create a private right of action to enforce its prohibitions by injunctive relief in *Franceschina* v. *Morgan*, 346 F. Supp. 833, 837 (S.D. Ind. 1972).

but wholly unrevealing wave-of-the-hand declaration" (Brown, C.J., dissenting) that a criminal statute like the one invoked here, providing specific protections to civil rights protest activity, "confers no rights whatsoever." Does this mean that it may be violated with impunity? In our system of jurisprudence, rights are frequently created by prohibitions, particularly in the criminal law, or by the Congressional direction that penalties will be imposed for criminal conduct. For every duty imposed through prohibitory language, there is a correlative right. Thus, without straining language we can say that § 245(b), by imposing on state officials a duty not to interfere with certain forms of civil rights protest activity enumerated in the statute, creates or provides a right on the part of civil rights demonstrators to be free from such interference. See J. Salmond, JURISPRUDENCE, ch. 10, § 72 (7th ed. 1924); J. Bentham, PRINCIPLES OF MORALS AND LEGISLATION, ch. 16, par. 25, pp. 224-25n (Oxford ed. 1879); W. Hohfeld, FUNDAMENTAL LEGAL CONCEPTIONS (1919).

Like the statute invoked in *Rachel*, the equal civil rights statute invoked here both (1) protects petitioners' Federal right to engage in conduct, for example, picketing and persuading shoppers not to patronize discriminatory merchants, which the vague and overbroad provisions of the state statute, generally punishing a conspiracy "to commit any act injurious . . . to public morals, trade or commerce" (Miss.

Code Ann. § 97-1-1(f) (1972)) were interpreted by the arresting officers to proscribe (thus creating a conflict between Federal and state law and substituting a Federal right for a state crime), and (2) provides the further statutory Federal right that state officials should not even attempt to arrest or prosecute petitioners, or otherwise forcibly intimidate or interfere with them, because of their protected conduct.

Although the statute in *Rachel* specifically provided that "No person shall . . . punish or attempt to punish" any person for exercising rights under that statute (§ 2000a-2(c)), § 245(b) by prohibiting acts or attempts to "injure, intimidate, or intefere" with civil rights protest rights employs a more general prohibition against *any* attempted injury, intimidation, or interference, which would include the forcible arrests and incarceration in this case, by any person "whether or not acting under color of law." Literal comparison of the two provisions suggests that § 245(b) is a more, not less, sweeping prohibition of official acts of harassment against equal civil rights than the limited proscription of § 2000a-2(c), since "attempts to punish" are only one means of injuring, intimidating, or interfering. Cf. *Whatley* v. *City of Vidalia*, 399 F.2d 521 (5th Cir. 1968); *North Carolina* v. *Hawkins*, 356 F.2d 559, 562 (4th Cir. 1966) (Sobeloff, J., concurring), cert. denied, 385 U.S. 949 (1966) (42 U.S.C. §§ 1971(a) and 1973i(b)).

II. Certiorari Should Be Granted Because the Decision Below Raises Significant and Recurring Problems Concerning Federal Civil Rights Removal Jurisdiction and Anticipatory Relief to Be Granted Against Pretextual and Spurious Prosecutions for Civil Rights Protest Activity.

The decision of the Court of Appeals raises significant and recurring problems concerning the availability of anticipatory relief against pretextual and spurious prosecutions for civil rights protest activity which should be resolved by this Court. There can be no doubt that the petitioners in this case were arrested and jailed for their peaceful exercise of Federally protected rights of civil rights protest which this Court has recognized in numerous decisions and which are expressly protected by § 245(b), but which continue to be denied in some places in the South. The facts of this case present the all too familiar picture of civil rights demonstrators being arrested on trumped up charges to intimidate and punish them for exercising their right to protest racial discrimination. These prosecutions are somewhat unique only in that they proceed on the theory that a civil rights protest demonstration violates Mississippi anti-trust laws.

Unless the decision of the Court of Appeals is reversed, state officials will remain free to arrest civil rights

demonstrators on trumped up charges, jail them under exhorbitant bonds, possibly subject them to harassment and brutality on the way to jail or in the jail itself, and require them to vindicate their rights only after costly and protracted litigation in the state courts which have not proved sympathetic to Federal claims. Cf. *Perkins* v. *Mississippi*, 455 F.2d 7, 11-61 (Brown, C.J. dissenting), aff'd per curiam en banc, 470 F.2d 1371 (5th Cir. 1972); *Thomas* v. *Mississippi*, 380 U.S. 524 (1965). Since the statute invoked here prohibits any interference with secured rights,

> "It is no answer in these circumstances that the defendants might eventually prevail in the state court. [Footnote omitted] The burden of having to defend the prosecutions is itself the denial of a right explicitly conferred . . ." *Rachel*, supra, 384 U.S. at 805.

In the landmark case of *Georgia* v. *Rachel*, supra, this Court revived civil rights removal jurisdiction under 28 U.S.C. § 1443(1) as an effective remedy for the misuse by the states of their criminal process to punish persons seeking to vindicate their Federally protected rights. If the holding of the majority of the Fifth Circuit that the prosecutions at issue here are not removable is permitted to stand, the decision will eviscerate Federal removal jurisdiction as one of the most effective remedies of the civil rights movement against official lawlessness and repression.

CONCLUSION

For the foregoing reasons, petitioners pray that their petition for a writ of certiorari be granted.

Respectfully submitted,

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APPENDIX A

Order of the Court of Appeals Denying Petition for Rehearing En Banc and Dissenting Opinion.

Albert JOHNSON et al.,
Petitioners-Appellants,

v.

STATE OF MISSISSIPPI et al.,
Respondents-Appellees.

No. 73-1476.

United States Court of Appeals,
Fifth Circuit.
March 15, 1974.

Appeal from the United States District Court for the Southern District of Mississippi; William Harold Cox, Judge.

ON PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC
(Opinion January 14, 1974, 5 Cir., 1974, 488 F.2d 284)

Before GODBOLD, DYER and GEE, Circuit Judges.

PER CURIAM:

The Petition for Rehearing is denied and the Court having been polled at the request of one of the mem-

bers of the Court and a majority of the Circuit Judges who are in regular active service not having voted in favor of it, (Rule 35 Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 12) the Petition for Rehearing En Banc is also denied.

Before BROWN, Chief Judge, and WISDOM, GEWIN, BELL, THORNBERRY, COLEMAN, GOLDBERG, AINSWORTH, GODBOLD, DYER, SIMPSON, MORGAN, CLARK, RONEY and GEE, Circuit Judges.

BROWN, Chief Judge, with whom WISDOM, THORNBERRY, GOLDBERG and AINSWORTH, Circuit Judges, join, dissenting;

I dissent to the Court's denial of rehearing en banc for two reasons. First, the issue is of recurring transcendent importance. Second, the panel's decision in my opinion is doubtful if not erroneous.

The question of whether the right of removal, 28 U. S. C. A. § 1443(1), should be denied to those persons seeking redress under 18 U.S.C.A. § 245 is of such moment that it cries out for consideration by the en banc court and should not be disposed of by the panel's sweeping but wholly unrevealing wave-of-the-hand declaration that § 245 "confers no rights whatsoever." This Court has in no prior decision authoritatively resolved the question of whether Congress intended to confer rights upon the victims of conduct which is made a criminal offense under § 245.

It is my opinion that the panel improperly concluded that § 245 is not a law providing for the equal civil rights of citizens within the meaning of the removal statute. The restrictive interpretation applied to § 245 refuses appellants their "right" to peacefully protest racial discrimination free from the harassment of bad-faith prosecutions inspired by their activities.

> Such a right is, of course, provided for and guaranteed under the First Amendment. While *Rachel* [Georgia v. Rachel, 384 U.S. 780, 86 S.Ct. 1783, 16 L.Ed.2d 925] teaches that the broad protection afforded all citizens by the Constitution precludes the characterization of any of its provisions as a "law providing for equal civil rights" within the meaning of § 1443 (1), § 245(b)(5) nevertheless provides unique, specific protection — phrased in terms of race — for the First Amendment right to protest segregration. Consequently it is a law *providing* for *equal* civil rights, satisfying the requirements of the civil rights removal statute.

* * * * * * * *

> In both its purpose (preventing unwarranted interference with the exercise of Federally protected equal civil rights) and the scope of its prohibition (against attempted injury, intimidation or interference by force or threat of force) § 245(b) is indistinguishable from the relevant provisions of the 1964 Civil Rights Act

> held sufficient to support removal jurisdiction in *Rachel.*

Perkins v. Mississippi, 5 Cir., 1972, 455 F.2d 7, 42-43 (Brown, C.J., dissenting).

Furthermore, the panel describes § 245 as exclusively a criminal statute not conferring any substantive rights. This position fails to recognize our Court's policy of according full effect to the remedial objectives inherent in congressional acts which seek to protect disadvantaged persons. Gomez v. Florida State Employment Service, 5 Cir., 1969, 417 F.2d 569, 576; Hall v. Garson, 5 Cir., 1970, 430 F.2d 430; Moreno v. Henckel, 5 Cir., 1970, 431 F.2d 1299.

> "No one can look at the atmosphere in which § 245 and its related parts were enacted without sensing that the whole thrust was a strong, immediate, indignant congressional response to spectacularly violent outrages against Negroes."

Perkins v. Mississippi, 5 Cir., 1972, 470 F.2d 1371, 1373 (Brown, C.J. dissenting).[1]

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[1]Ostensibly *Perkins* may appear to state the law but in reality it is not a precedent, as witness the panel's failure to cite it in the instant case. With petition for rehearing of the en banc decision still pending, the parties settled the whole case. We expressly denied the appellant-plaintiff's motion to vacate and dismiss as moot, but in fact it was moot. Review by the Supreme Court became impossible and under all precedents the case was effectually eradicated so it spawns no legal precedents. Troy State University v. Dickey, 5 Cir., 1968, 402 F.2d 515, 516-517; New Left Educ. Project v. Board of Regents, 5 Cir., 1973, 472 F.2d 218, 221; National Lawyers Guide v. Board of Regents, 5 Cir., 1974, ____ F.2d ____ [No. 73-1623].

The foreboding result which excludes § 245 from the ambit of removal establishes a precedent which will prevent the federal courts from granting relief in future cases of spurious criminal prosecutions against persons protesting racial discrimination. Even worse, this ruling, if it is allowed to stand, leaves a large group of potential victims without effective personal redress for acts which run the gamut of crass, undisguised racial discrimination.[2] It is not confined merely to those pursued by unfounded prosecutions.

It denies history and the temper of Congress in the times giving rise to § 245 to assume that Congress, while on the one hand giving the awesome sanction of criminal law, meant on the other to grant no implied statutory claim to seek redress by damages for the conduct which violates the law. The law was designed to protect the oppressed. It hardly satisfies their needs when the only comfort to be derived is to send the perpetrator to jail and the victim is left without redress for damages directly flowing from the admitted criminal act.

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[2]Section 245 protects voting, voting procedures, running for office, enjoyment of governmental programs, employment by the United States, serving as a juror, attending school, enjoyment of state programs, joining or using a labor union, enjoying the services of inns, hotels, restaurants, encouraging others to protest against discrimination, enjoyment of free speech and public assembly, and many more.

APPENDIX B

Opinion of the Court of Appeals.

Albert JOHNSON et al.,
Petitioners-Appellants,
v.
STATE OF MISSISSIPPI et al,
Respondents-Appellees.

No. 73-1476.

United States Court of Appeals,
Fifth Circuit.
Jan. 14, 1974.

Appeal from the United States District Court for the Southern District of Mississippi.

Before GODBOLD, DYER and GEE, Circuit Judges.

DYER, Circuit Judge:

This is an appeal from the district court's order remanding state criminal prosecutions which appellants had removed to federal court pursuant to 28 U.S.C.A. § 1443(1) and 13 U.S.C.A. § 245(b). Because § 245 is not a law providing for the equal civil rights of citizens within the meaning of the removal statute, we affirm.

Appellants are black citizens of Vicksburg, Mississippi who organized a boycott of local businesses for the purpose of gaining equal employment opportunities

in the privately owned stores and in city government and its agencies, and to publicize other civil rights grievances. Picketing and leafleting began in late March of 1972 and continued until early May of the same year when the forty nine appellants were arrested and charged with criminal restraint of trade and criminal conspiracy in restraint of trade. In an attempt to utilize the removal statute, 28 U.S.C.A. § 1443(1),[1] appellants assert that the Civil Rights Act of 1968, 13 U.S.C.A. § 245,[2] is a pre-emptive statute which granted the right to be free from harassment, such as subjec-

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[1]The relevant provision of 28 U.S.C.A. § 1443(1) reads:

> Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:
>
> (1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof.

[2]Appellants rely on the following provisions of 18 U.S.C.A. § 245:

> § 245
>
> (b) Whoever, whether or not acting under color of law, by force or threat of force wilfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with —
>
> (1) any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from —
>
> * * * * * * * *
>
> (C) applying for or enjoying employment, or any prerequisite thereof, by any agency of the United States, (2) any person because of his race, color, religion or national origin and because he is or has been —
>
> (A) enrolling in or attending any public school or public college;

(B) participating in or enjoying any befenit, service, privilege, program, facility or activity provided or administered by any State or subdivision thereof;

(C) applying for or enjoying employment, or any prerequisite thereof, by any private employer or any agency or any State or subdivision thereof, or joining or using the services or advantages of any labor organization, hiring hall, or employment agency;

* * * * * * * *

(F) enjoying the goods, services, facilities, privileges, advantages, or accommodations of any inn, hotel, motel, or other establishment which provides lodging to transient guests, or of any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility which serves the public and which is principally engaged in selling food or beverages for consumption on the premises, or of any gasoline station, or of any motion picture house, theater, concert hall, sports arena, stadium, or any other place of exhibition or entertainment which serves the public and (i) which is located within the premises of any of the aforesaid establishments or within the premises of which is physically located any of the aforesaid establishments, and (ii) which holds itself out as serving patrons of such establishments; or

* * * * * * * *

(4) any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from —

(A) participating, without discrimination on account of race, color, religion or national origin, in any of the benefits or activities described in subparagraphs (1)(A) through (1)(E) or subparagraphs (2)(A) through (2)(F); or

(B) affording another person or class of persons opportunity or protection to so participate; or

(5) any citizen because he is or has been, or in order to intimidate such citizen or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination on account of race, color, religion or national origin, in any of the benefits or activities described in subparagraphs (1)(A) through (1)(E) or subparagraphs (2)(A) through (2)(F), or participating lawfully in speech

tion to spurious criminal charges, for having engaged in constitutionally protected activity. Therefore, they assert that they are entitled to have their prosecutions removed from the state court.[3]

At the outset, we note that there is no question of appellants' right to engage in peaceful picketing. Machesky v. Bizzell, 5 Cir. 1969, 414 F.2d 283; Smith v. Grady, 5 Cir. 1969, 411 F.2d 181; Kelly v. Page, 5 Cir. 1964, 335 F.2d 114. Although the state contends that the arrests were predicated not on peaceful protest, but on acts of intimidation and coercion, the question in this appeal is not whether appellants had a constitutional right to engage in the activity for which they are now being prosecuted, but whether they are entitled to invoke the extraordinary protection of the removal statute. The key to removal under § 1443(1) is whether there exists a law "providing for . . . the equal civil rights of citizens." Unlike all previous cases which have interpreted the phrase and which have focused on whether a particular statute meets the "equal civil rights" test, the essential inquiry here is whether § 245, which clearly deals with equal civil rights,

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or peaceful assembly opposing any denial of the opportunity to so participate —
shall be fined not more than $1,000, or imprisoned not more than one year, or both; and if bodily injury results shall be fined not more than $10,000, or imprisoned not more than ten years, or both; and if death results shall be subject to imprisonment for any term of years or for life. . . .

[3]Subsequent to the filing of this appeal, the grand jury returned no true bills in 43 cases, hence only six of the original appellants still have an interest in removal.

meets the requirement that the law be one *providing* such rights.

Our consideration of whether § 245 is within the contemplation of § 1443(1) begins with Georgia v. Rachel, 1966, 384 U.S. 780, 86 S.Ct. 1783, 16 L.Ed.2d 925, in which the Supreme Court gave careful consideration to the legislative history of the removal statute. The Court's conclusion that § 1443(1) encompasses "any law providing for specific civil rights stated in terms of racial equality" must be read in conjunction with the Court's reference to the Civil Rights Act of 1866 as the "model" of a law within the meaning of § 1443(1). The 1866 Act, the substantive provisions of which are now codified as 42 U.S.C.A. § 1981 and § 1982,[4] bestowed certain basic rights regardless of race. The *Rachel* Court concluded that the Civil Rights Act of 1964,[5]

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[4] § 1981 provides:

> All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

§ 1982 provides:

> All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

[5] 42 U.S.C.A. § 2000a(a)

> All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section,

which *granted* the right to racially nondiscriminatory service in places of public accommodation, was also within the compass of the removal statute. In explicating the rationale for its determination that the 1964 Act, like the model of 1866, was within § 1443(1), the Court said;

> That Act [the Civil Rights Act of 1964] is clearly a law *conferring* a specific right of racial equality, for . . . *it guarantees* to all the "full and equal enjoyment" of the facilities of any place of public accommodation without discrimination on the ground of race.

Id. at 792-793, 86 S.Ct. at 1790 (emphasis supplied)

Unlike the defendants in *Rachel*, the defendants in City of Greenwood v. Peacock, 1966, 384 U.S. 808, 86 S.Ct. 1800, 16 L.Ed.2d 944, were unsuccessful in their effort to remove their state prosecutions. The Court

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without discrimination or segregation on the ground of race, color, religion, or national origin.

42 U.S.C.A. § 2000a-2

No person shall (a) withhold, deny, or attempt to withhold or deny, or deprive or attempt to deprive, any person of any right or privilege secured by section 2000a or 2000a-1 of this title, or (b) intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person with the purpose of interfering with any right or privilege secured by section 2000a or 2000a-1 of this title, or (c) punish or attempt to punish any person for exercising or attempting to exercise any right or privilege secured by section 2000a or 2000a-1 of this title.

in *Peacock* gave two reasons for reaching a result opposite that of *Rachel:*

> First, no federal law confers an absolute right on private citizens — on civil rights advocates, on Negroes, or on anybody else — to obstruct a public street, to contribute to the delinquency of a minor, to drive an automobile without a license, or to bite a policeman. Second, no federal law confers immunity from state prosecution on such charges.

Id. at 826-827, 86 S.Ct. at 1812.

Focusing on the first point, that is, the absence of a federal law which granted a right to engage in acts which would otherwise be in violation of state law, this Court in Whatley v. City of Vidalia, 5 Cir. 1968, 399 F.2d 521, concluded that the Voting Rights Act of 1965 granted the specific civil right found lacking in *Peacock*. Section 11(b) of the 1965 Act, now 42 U.S.C.A. § 1971i(b) specifically forbade any "attempt to intimidate, threatent, or coerce any person for urging or aiding any person to vote or attempt to vote." Although phrased in prohibitory language, the law *created* a new legal right, and was, therefore, held to be one which provides for equal civil rights.

Appellants contend that the proscriptions of § 245 must lead to the same legal conclusion as that reached in *Whatley*. In other words, since § 245, like § 1973i(b), forbids certain forms of harassment such as the bringing of spurious criminal charges, the appel-

lants in the case *sub judice* have a right of removal equivalent to that accorded the appellants in *Whatley*. This argument, however, misses an essential distinction between the two statutes. Unlike § 1973i(b), § 245 is exclusively a criminal statute. While a variety of acts which interfere with the exercise of civil rights are made criminal by § 245, that statute confers no rights whatsoever. When compared to the "model" of 1866 cited by the Supreme Court in *Rachel*, and to the laws since held to be within § 1443(1), § 245 cannot be characterized as a law which *provides* for the equal civil rights of citizens.

Because of our determination that appellants cannot rely on § 245 as a basis for seeking removal, the order of the district court remanding these cases to the state court must be

Affirmed.

APPENDIX C

Judgment of the Court of Appeals.

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
October Term, 1973

No. 73-1476

D. C. Docket No. 72W-7(C)

ALBERT JOHNSON, ET AL,
Petitioners-Appellants,

versus

STATE OF MISSISSIPPI, ET AL,
Respondents-Appellees.

Appeal from the United States District Court for the Southern District of Mississippi

Before GODBOLD, DYER and GEE, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Mississippi, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the order of the District Court appealed from, in this cause be, and the same is hereby, affirmed.

Issued as Mandate: January 14, 1974

APPENDIX D

Opinion of the District Court.

Filed: Dec. 29, 1972

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

ALBERT JOHNSON, ET AL
Petitioners

versus Crim. No. 72W-7

STATE OF MISSISSIPPI, ET AL
Respondents

The petitioners are forty-nine persons in Vicksburg in this class action who seek to have various criminal actions removed from the City Court of Vicksburg and from the County Court of Warren County to this Court for a judgment of dismissal. This community has been the object of a boycott by blacks against the white

merchants in Vicksburg because of certain real or imaginary grievances which the black leaders in the community conceive to be unjust and unfair and discriminatory against their race. Basically, the primary complaint of the black community in Vicksburg is as to the fact that there are no blacks in high office in the City Hall. There are black police officers on the police force in Vicksburg, but this is not satisfactory, and the black community has resorted to trade tactics in Vicksburg which they conceive as proper to compel the merchants in Vicksburg to bring pressure upon the official structure of the city to rectify certain inequities and injustices to the black race as to official representation in the official structure of the municipality.

Conferences were held between these warring groups until finally the blacks organized into a body known as "Black Concerned Citizens of Vicksburg" who rejected all overtures to meet and decide their problems with the Vicksburg Chamber of Commerce. Instead, these concerned citizens issued their ultimatum consisting of twelve demands as their price for domestic peace.[1] Finally, on March 25, 1972 these pro-

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[1] 1. Dismissal of Judge Oscar LeBarre; 2. Demotion of Captain Coulter; 3. Impeachment of John Ellis - District Attorney; 4. Discharge of the two (one) white policemen who were responsible for the beating of Mr. Neal Antoine; 5. Hiring 40% Blacks in City Government jobs at all levels; 6. Hiring at least two Black reporters for the city newspaper; 7. Hiring 40% Blacks on Urban Renewal staff at all levels; 8. Restore the name of all previous Black schools; 9. Enforcement of present housing code in the city; 10. Creation of a civilian police review board; 11. End all police harassment of Black people; 12. The immediate release of Lamar Burk and the two juveniles who were arrested on March 23, 1972.

testers inaugurated the practice of picketing the downtown merchants as a means of expression of their disapproval of these economic and political pressures allegedly exerted upon them. The white merchants of Vicksburg were made the object of the boycott which had for its avowed purpose an economic injury to these merchants with whom they actually had no quarrel.[2] Nobody questions the right of anyone of these citizens to peacefully picket and to air their disapproval, or voice their resentment regarding anyone of these objects of their disaffection. But this entire program, like most of its kind, got out of hand, and on May 2 and May 13, 1972 when these pickets began threatening and intimidating other blacks who patronized these white merchants in disregard of these picket lines. These black citizen victims were called "Uncle Toms" and were marked for annoyance and harassment, and even acts of violence on occasions as a result of trading with white merchants of their choice. They were telephoned during the dead of night and played recordings which were designed to frighten and intimidate these black citizens. Criminal statutes in Mississippi have been enacted to prevent unlawful boycotts in restraint

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[2] A secondary boycott involves pressure sought from third parties against a party to a labor dispute that is unlawful at common law. Any kind of boycott, however, is unlawful if executed with force or violence or threats and a conspiracy to that end is likewise unlawful. See Footnote 90, page 934 in 79 CJS; Chapter 323 Mississippi Laws 1942; Cf: *Gulf Coast Building & Construction Trades Council v. F. R. Hoar & Sons, Inc.*, (5CA) 370 F.2d 746.

of trade[3] and to prevent any coercive, or threatening mistreatment of a citizen arising, or growing out of such a program.[4] These local statutes do not in any wise or to any extent impinge upon any federally protected right and are expressly authorized by federal statute.[5]

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[3]Mississippi Code 1942 §2059.2 provides: "If two (2) or more persons conspire to prevent any person from accepting or holding any office, trust, or place of confidence under the State of Mississippi or any subdivision thereof, or to induce any officer of the State of Mississippi or subdivision thereof to leave the place where his duties as an officer are required to be performed and as a means of carrying out the object of such conspiracy, shall cause or attempt to cause, or induce or encourage any individual or individuals to cease doing business with any other person or to cease using, buying, selling, or otherwise dealing in the products of any other person, each of such persons shall be fined upon conviction not more than One Thousand Dollars ($1,000.00), or imprisoned for not more than five (5) years, or both."

[4]Mississippi Code 1942 §2384.5 provides: "If any person shall in any manner threaten with bodily harm, intimidate or coerce another person to prevent said person from lawfully trading or carrying on business, including buying or selling, he shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment for not more than one (1) year in the county jail or be fined not more than One Thousand Dollars ($1,000.00) or both."

That section of the Code is construed in *Rudolph Shields v. State of Mississippi*, 203 So.2d 78 to mean that: "Any words or acts calculated and intended to cause an ordinarily prudent and firm person to fear an injury to his person or property are sufficient, although the person to whom they are directed need not in fact be intimidated."

[5]18 U.S.C. (1964 ed.) §245 provides: "Nothing in this section shall be construed as indicating an intent on the part of Congress to prevent any State, any possession or Commonwealth of the United States, or the District of Columbia, from exercising jurisdiction over any offense over which it would have jurisdiction in the absence of this section, nor shall anything in this section be construed as depriving State and local law

These forty-nine named petitioners and the innumerable parties to this class action who are parties to this conspiracy now seek to have this Court remove these cases pending against them in the police court of Vicksburg, and in the County Court of Warren County to this Court for dismissal here. At the outset, this Court finds as a fact that not one of these petitioners in this case is an officer of the United States, or is acting, or was acting on such occasion of arrest in any capacity as a de jure, or de facto officer, or official of the United States. We are not concerned in this case with the question of the guilt or innocence of these petitioners, or either of them of the crimes with which they are charged. They were not engaged at the time in the discharge, or performance of any federally protected right or activity. 28 U.S.C.A. §1442(a)(1) would authorize any such prosecution of a federal officer or person acting under him to remove any such prosecution to this Court.[6] This petition does not in any wise or to any extent involve the exercise by these petitioners of any federally protected right such as public accommodation, peaceful picket and the like[7].

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enforcement authorities of responsibility for prosecuting acts that may be violations of this section and that are violations of State and local law."

[6]*John T. Willingham, et al v. Daniel Morgan,* 89 S.Ct. 1813.

[7]In *Jessie Hartfield v. State of Mississippi,* (5CA) 367 F.2d 362, the Court heard several cases on motion to remand a criminal removal proceeding, and held that only trespass case number 22,574 should be remanded, but that the case involving parading without a permit, and for picketing various businesses on Capitol Street by parading without a permit and for gathering on the steps of the United States Courthouse after being

The criminal prosecutions in this case arise, or grow out of incidents which occurred in connection with this boycott of white merchants in Vicksburg by these petitioners who call themselves "Concerned Citizens." These petitioners are charged in the state court with the violation of the statutes set forth in footnote 3 and in footnote 4 of this memorandum. Each of these incidents in some wise relate, or grow out of this boycott, or selective buying campaign as petitioners prefer to call it. If this plan and program of these petitioners were as peaceful and as harmless and as innocuous as it is alleged to be, then it would behoove this Court to overrule the motion to remand, and thereupon dismiss this entire proceeding in these state courts. But such are not the facts as found by this Court on live testimony, and on supporting affidavits of the respective parties. These petitioners are before this Court on charges which are violative of the state statutes cited, and this Court finds that there was and is probable cause for their arrest and charge of such offenses. This is not to be understood, or construed in any wise as a finding by this Court of the guilt or innocence of these named petitioners, or the innumerable Negroes as a class who may have been participating in

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requested to leave, and for using loud and boisterous language which disturbed the peace were not removable, and the order of the trial court for remand was affirmed.

Neither the Equal Protection Clause of the Fourteenth Amendment nor any statute confers color of authority on civil rights demonstrators to authorize removal of civil rights prosecutions. Civil rights demonstrators were not acting under color of authority derived from laws providing for equal rights, and were not entitled to have state prosecutions removed to federal courts. *People of New York v. Milton A. Galamison*, (2CA) 342 F.2d 255, certiorari denied 85 S.Ct. 1342.

these unlawful ways in these activities. Everyone of them is presumed by this Court to be innocent of the offense, but they are entitled to all due process rights of a fair and prompt trial of these charges pending against them in these state courts. No informed person would for one moment contend that these petitioners and this class which they represent are not entitled to trade with whom they please, and to publicly acclaim their disaffection for any merchant in business in this locality, but they are only entitled as a matter of right to do that by lawful means, and not by unlawful means in violation of these statutes. These sound principles and well established laws in this Circuit stand out as mountain peaks in our federal jurisprudence. Some stated principles in this connection may be helpful.[8]

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[8]The averments of the petition to remove in this case in their entirety are couched in conclusionary terms. Of such a faulty pleading in *James Brown v. W. B. Rayfield, Chief of Police*, (5CA) 320 F.2d 96, the petitioners averred that all public officials are committed to a policy of segregation by state law; that the judges of the state courts are elected and give tacit and open approval and support to that policy as reflected in the opinions of its courts; and that any resort to state remedies would be futile and result in delay and defeat of the right to the writ; that the freedom rider cases in June 1961 have not yet been disposed of and that such delays are inordinate and defeat the purpose of the writ and that the petitioners' arrest and confinement is patently unconstitutional and in disregard of the laws of the United States, will not entitle an applicant to a writ of habeas corpus. Citing *In Re Wykoff*, 6 R.R.L.R. 793 (5CA); *In Re Wykoff*, 6 R.R.L.R. 794 (S.Ct.).

A conspiracy charge is an elusive one to prosecute, or defend as experience would indicate. In *Southern Christian*

Broad contentions under First Amendment and Due Process Clauses cannot support a claim for removal of state court prosecutions because such contentions do not involve laws providing for equal civil rights. Trespass charges growing out of attempts to get service at places of public accommodation are removable. A removal petition must allege factually that the petitioners will be brought to trial solely as a result of peaceful attempts to obtain service at places of public accommodation. Such action is condemned by the Civil Rights Act of 1964. The petitioners are entitled to have an opportunity to establish in the federal court the fact that they were required to leave the restaurant for racial reasons. *State of Georgia v. Thomas Rachel*, 86 S.Ct. 1783.

A Negro was arrested at a gas service station for disorderly conduct. He simply used the rest room in violation of the owner's wishes. Presley refused to pay for gas which he bought because he said the rest room was not clean. He was loud and had been drinking. A service station is a place of public accommodation. The Court said that probable cause existed for his arrest for disorderly conduct, and that he had not shown that he was being prosecuted for exercising, or

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Leadership Conference, Inc., et al v. A. G. Corporation, 241 So. 2d 619, 625 the Supreme Court of Mississippi as to such a charge said: " 'Private persons cannot conspire to illegally destroy the business of another, and where two or more persons conspire together, the conspiracy makes the wrongful acts of each the joint acts of all of them. Globe & Rutgers Fire Ins. Co. v. Firemen's Fund Ins. Co. et al., 97 Miss. 148, 52 So. 454, 29 L.R.A., N.S., 869; State ex rel. Rice v. Hasson Grocery Co., 177 Miss. 204, 170 So. 234, 107 A.L.R. 663.' 205 Miss. at 375, 38 So.2d at 769."

attempting to exercise any right or privilege secured by the Civil Rights Act of 1964. The petition for removal was remanded and affirmed. *Glynnell Presley v. City of Monticello,* (5CA) 395 F.2d 675.

A prosecution of a Negro for assault with a weapon and carrying a concealed weapon on his person could not be removed to the federal court by a petitioner who had been active in Negro voter registration, and had opposed the political establishment in his parish. That did not amount to violation of due process or false arrest. A showing that rights of the defendant in state prosecutions have been illegally and corruptly denied by state officials prior to trial, or that the charges are false is not sufficient to warrant removal of state prosecutions under the Civil Rights Act. The remand was approved. *State of Louisiana v. Lawrence J. Rouselle, Jr.,* (5CA) 418 F.2d 873.

The United States Supreme Court in the *Peacock* case settled these principles and set the contentions herein projected to rest.[9]

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[9]*City of Greenwood v. Peacock,* 384 U.S. 808, 86 S.Ct. 1800 (1966) holds: (1) That 28 U.S.C. Section 1443(2) only authorizes removals in such cases by federal officers or agents; (2) That Section 1443(1) authorizes a removal on allegation that the prosecution stems *exclusively* from petitioners' peaceful exercise of their right to equal accommodations under the Civil Rights Act of 1964; (3) It is not enough to support removal under Section 1443(1) to allege or show that defendants' federal equal civil rights have been illegally and corruptly denied by administrative officials in advance of trial; that the charges against them are false, or that the defendants are unable to obtain a fair trial in the particular state court. The motives of the officials bringing the charges may be corrupt, but that does not show that the state trial court will find the

The United States Court of Appeals for the Fifth Circuit had a similar situation before it in the *Perkins* case and disposed of it in accordance with the principles stated in the *Peacock* case by the Supreme Court of the United States.[10]

It is the view of this Court from the evidence and supporting testimony that this Court has no jurisdiction of this criminal removal proceeding; that the motion to remand this suit and its accompanying class action to the County Court and to the City Police Court in

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defendants guilty if he is innocent or that he will in any other manner be denied or cannot enforce in the state courts any right under a federal law providing for civil rights. The civil rights removal statute does not require and does not permit the judges of the federal court to put their brethren of the state judiciary on trial. This *Peacock* case is different from the accommodations case of *Rachel;* first, no federal law confers absolute right on private citizens — on civil rights advocates — on Negroes or on anybody else to obstruct a public street, to contribute to the delinquency of a minor, to drive an automobile without a license, or to bite a policeman; second, no federal law confers immunity from state prosecution on such charges.

[10]In *John M. Perkins v. State of Mississippi,* (5CA) 455 F.2d 7, the petitioners had been conducting a boycott at Mendenhall and presumably picketing down there in furtherance thereof, but near Plain and at the Brandon jail in Rankin County they were arrested on various criminal charges which they sought to remove to the Federal court. These cases in this contention to remove were given a full evidentiary hearing, and the motion to remand was sustained. The Fifth Circuit affirmed on the philosophy of the *Peacock* case. The Court specifically called attention to 18 U.S.C.A. §245(a)(1) which says: "Nor shall anything in this section be construed as depriving state and local law enforcement authorities of responsibility for prosecuting acts that may be violations of this section and that are violations of state and local law," etc. Rehearing denied en banc 12-20-72.

Vicksburg should be sustained; and that the petitioners here including all black citizens who describe themselves as "Concerned Citizens," and who have thus participated in this proceeding here, should be assessed with all costs of this proceeding.

A judgment accordingly may be entered within five days as provided by the rules of this Court. A certified or attested copy of that judgment shall be furnished to the County Court of Warren County, Mississippi, and a copy to the Police Court of Vicksburg, Mississippi shall be furnished to them as evidence of the fact that such courts shall thereby be and become reinvested with full jurisdiction of these numerous complaints pending in said courts involving violations of said criminal statutes of the state of Mississippi, and arising or growing out of such boycott, or selective buying program as it may be preferred to be called.
December 29, 1972

/s/ HAROLD COX
UNITED STATES DISTRICT JUDGE

MICHAEL RODAK, JR. C

In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1531

ALBERT JOHNSON, REV. EDDIE McBRIDE, JOHN FERGUSON, CHARLES CHIPLIN, ISAAC REMBERT and JAMES ODELL DIXON,

Petitioners,

vs.

STATE OF MISSISSIPPI,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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OPINIONS BELOW

The opinions of the lower courts are adequately presented in the petition.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on January 14, 1974. The petition for a rehearing or in the alternative a rehearing en banc was denied on March 15, 1974. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

QUESTION PRESENTED

Whether 18 U.S.C. §245 is a law *providing* for equal civil rights as envisioned by 28 U.S.C. §1443(1) to serve as a foundation for criminal removal.

STATEMENT OF THE CASE

On or about March 25, 1972, a black boycott of local businesses began in Vicksburg, Mississippi, and continued for approximately five weeks. The stated purpose of this campaign was to attain equal employment opportunities in the privately owned establishments and in the municipal government and its agencies.

The petitioners allege that they were "engaged in picketing and distribution of leaflets" and that these activities are constitutionally protected modes of expression. While it is not disputed that these petitioners may or may not have been engaged in these normally protected activities at one time or another, respondent states that these are not the incidents for which the individuals were charged.

Factual presentation indicates that there had been two separate instances surrounding the arrests of the complaining individuals. The first was marching and/or picketing in the City of Vicksburg. There were no accompanying incidents to necessitate state action. However, the second is of an entirely different posture. The arrests of the petitioners arose from acts of intimidation toward shoppers and/or merchants who were attempting to perform related business activities. The arrests in question occurred on these separate occasions—May 2, May 13 and May 15, 1972. Nearly all arrests were founded upon a breach

of the Mississippi Secondary Boycott statute, §97-23-85, Mississippi Code of 1972. However, on May 13, 1972, Albert Johnson was additionally charged upon sworn affidavit pursuant to §97-23-83, Mississippi Code of 1972, of having specifically interfered with and intimidated one James E. Sturgis, a black principal of a high school, for trading with a white merchant.

In an attempt to utilize the removal statute, 28 U.S.C. §1443(1), the petitioners assert the Civil Rights Act of 1968, 18 U.S.C. §245.

Predicated upon the pronouncements of this Court in *Georgia v. Rachel,* 384 U.S. 780 (1966) and *Greenwood v. Peacock,* 384 U.S. 808 (1966), the courts below denied the petitioners' request for removal. The district court issued its order of remand January 4, 1973; the Circuit Court of Appeals affirmed, 5 Cir., 1974, 488 F.2d 284, reh. and reh. en banc denied 491 F.2d 94. In doing so, the appellate court rejected the petitioners' argument that 18 U.S.C. §245 is sufficient basis to invoke the federal removal statute.

ARGUMENT

In its original panel decision, the Circuit Court of Appeals succinctly stated the issue now before this Court:

> "The key to removal under §1443(1) is whether there exists a law 'providing for . . . the equal civil rights of citizens.' Unlike all previous cases which have interpreted the phrase and which have focused on whether a particular statute meets the 'equal civil rights' test, the essential inquiry here is whether §245, which clearly deals with equal civil rights, meets the requirement that the law be one providing such rights." 488 F.2d 284, 286.

I.

The Teachings of Rachel and Peacock Foreclose Petitioners from Utilizing the Extraordinary Remedy of Removal in This Cause.

After a comprehensive analysis of the history of the civil rights removal statute and the opinions construing it, this Court concluded in *Georgia* v. *Rachel,* supra, that decisions up to that time had established that, in order to come within what is now Section 1443(1), a petitioner must show that a denial or inability to enforce "a right under any law providing for the equal civil rights of citizens of the United States" in the courts of a state "be manifest in a formal expression of state law," 384 U.S. 780, 803-804. Quoting the statement in *Virginia* v. *Rives,* 100 U.S. 313, 319 (1880), that the denial of which the removal statute speaks "is primarily, if not exclusively, a denial . . . resulting from the Constitution or laws of the State . . .," the Court held that removal under Section 1443(1) would be justified "if an equivalent basis could be shown for an equally firm prediction that the defendant would be 'denied or cannot enforce' the specified federal rights in the state court."

When speaking to the question of removal, of paramount issue there as here the Court, in its interpretation of the federal statute, stated as its directive:

> "Section 1443(1) entitles the defendants to remove these prosecutions to the federal court only if they meet both requirements of that subsection. They must show both that the right upon which they rely is a 'right under any law providing for . . . equal civil rights,' and that they are 'denied or cannot enforce' that right in the courts of Georgia." *Rachel,* 384 U.S. 780, 788.

These limitations were met in *Rachel* by the Court's recognition of two intervening factors: (1) the passage of Congress of the Civil Rights Act of 1964, Section 201, 78 Stat. 243, 42 U.S.C. 2000(a); and (2) their interpretation of that statute in *Hamm* v. *City of Rock Hill,* 379 U.S. 306 (1964). While acknowledging that Public Accommodations legislation was enacted subsequent to the attempted removal, the Court reasoned that the Act entitled all persons to be served in restaurants open to the public. The defendants who had been in such a restaurant were being prosecuted under a Georgia statute making it a misdemeanor to not leave the premises when ordered to do so by the "owner or person in charge." Section 203(c) of the Civil Rights Act prohibits any "attempt to punish" persons for exercising the rights of equality so conferred. This had been interpreted in *Hamm* to prohibit not merely conviction but prosecution. Hence, if defendants could substantiate the allegations in the removal petition that they had been asked to leave for racial reasons, prosecution in the state courts would itself "deny" a right conferred by Title II of the 1964 Civil Rights Act.

Illustrating that removal is essentially factual, the Court reached a different conclusion in *City of Greenwood* v. *Peacock,* 384 U.S. 808 (1966). There the defendants were charged with obstructing public streets, and various other offenses. The then petitioners alleged their arrests were racially motivated, stemming from their participation in voter registration drives in Mississippi. Despite the enactment of the Voting Rights Act of 1965, 42 U.S.C. 1973, the Court held that this case was to be governed by the previous line of decisions against removal culminating in *Kentucky* v. *Powers,* 201 U.S. 1 (1906), rather than *Rachel.*

A clear distinction was made between *Rachel* and *Peacock*. In the language of the decision:

> "The present case differs from Rachel in two significant respects. First, no federal law confers an absolute right on private citizens—on civil rights advocates, on Negroes, or on anybody else—to obstruct a public street, to contribute to the delinquency of a minor, to drive an automobile without a license or to bite a policeman. Second, no federal law confers immunity from state prosecutions on such charges." *Peacock*, 384 U.S. 808, 826, 827.

In sum, the doctrine announced by the Court was also a limitation on removal.

> "It is *not* enough to support removal under Section 1443(1) to allege or show that the defendant's federal equal civil rights have been illegally and corruptly denied by state administrative officials in advance of trial, that the charges against the defendant are false, or that the defendant is unable to obtain a fair trial in a particular state court. The motives of the officers bringing the charges may be corrupt, but that does not show that the state trial court will find the defendant guilty if he is innocent, or that in any other manner the defendant will be 'denied or cannot enforce in the courts' of the State any right under a federal law providing for equal civil rights. The civil rights removal statute does not require and does not permit the judges of the federal courts to put their brethren of the state judiciary on trial. Under Section 1443(1), the vindication of the defendant's federal rights is left to the state courts except in the rare situations where it can be clearly predicted by reason of the operation of a pervasive and explicit

state or federal law that those rights will inevitably be denied by the very act of bringing the defendant to trial in the state court. Georgia v. Rachel, 384 U.S. 780, 16 L.Ed.2d 925, 86 S.Ct. 1783; Strauder v. West Virginia, 100 U.S. 303, 25 L.Ed. 664." (Emphasis in original) *Peacock*, 384 U.S. 808, 827, 828.

II.

18 U.S.C. §245 Is a Criminal Statute That Does Not Provide for Equal Civil Rights.

The argument of Albert Johnson, et al., for removal is founded on the Civil Rights Act of 1968, 82 Stat. 73, which was added to Title 18 of the United States Code §245, entitled "Federally Protected Activities." Unlike the statutes on public accommodations and voting rights, the 1968 Act does not in terms confer substantive rights; it is solely a criminal statute permitting federal prosecution for interference with a long list of activities. *Perkins* v. *Mississippi*, 5 Cir. 1972, 470 F.2d 1371 (en banc affirmance, concurring opinion, Bell, J.); *Williams* v. *Tri-County Community Center*, 5 Cir. 1971, 452 F.2d 221, fn. 3; *Hill* v. *Commonwealth of Pennsylvania*, 3 Cir. 1971, 439 F.2d 1016, cert. den. 404 U.S. 985; *People of State of New York* v. *Horelick*, 2 Cir. 1970, 424 F.2d 697, cert. den. 398 U.S. 939.

Subdivision (b) says that "Whoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with" five broad categories of persons, several divided into subcategories, shall be subject to fine or imprisonment as there described. At least two of the categories, (1) and (3), taken by themselves, would not seem to fit the definition of "equal civil

rights" in *Rachel,* to-wit, "any law providing for specific civil rights states in terms of racial equality." 384 U.S. 780, 792.

III.

The Facts of Johnson Dispel Any Reliance upon 18 U.S.C. §245(b) and Place This Cause Squarely Within the Strictures of Rachel and Peacock.

The petitioners in this appeal were not arrested as a result of their exercise of any First Amendment right of expression, i.e., picketing and marching. The legal proceedings in question were initiated only *after* it was discovered that certain individuals were in fact engaged in ancillary, unprotected activity to perpetuate an illegal boycott. In other words, the respondent believes that the reason for probable cause and the subsequent arrests of these individuals was unprotected conduct outside the ambit of the First Amendment shield. *United States* v. *O'Brien,* 391 U.S. 367, 376 (1968). The right of peaceful protest does not mean that everyone with opinions or beliefs may express them in any manner, at any time and at any place. *Cox* v. *Louisiana,* 379 U.S. 559 (1965). In effect, such a posture places the actions of the petitioners squarely within the admonition of the Supreme Court in *Peacock,* 384 U.S. 808, 826, 827:

> "The present case differs from Rachel in two significant respects. First, no federal law confers an absolute right on private citizens—on civil rights advocates, on Negroes, or on anybody else—to obstruct a public street, to contribute to the delinquency of a minor, to drive an automobile without a license, or to bite a policeman. Second, no federal law confers immunity from state prosecutions on such charges."

Therefore, when stripped of all else, the petitioners are left with nothing more than First Amendment allegations to support their request for removal. This is insufficient; injunction is more appropriate, *Peacock*, 384 U.S. 808, 825, 829, and the timetable more immediate, *Mitchum* v. *Foster*, 407 U.S. 225 (1972).

CONCLUSION

Upon the facts presented in this case, it may clearly be seen that the exacting criteria for removal has not been met. 18 U.S.C. §245 is, by its very language, criminal in nature; it "provides" no specific civil right stated in terms of racial equality. Removal is not the proper remedy here; a more appropriate avenue would have been to seek injunctive relief.

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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CERTIFICATE

I, Ed Davis Noble, Jr., Special Assistant Attorney General, do hereby certify that I have mailed this date by United States Mail, postage prepaid, a true and correct copy of the above and foregoing Brief of Respondent in Opposition to Petition for Writ of Certiorari to:

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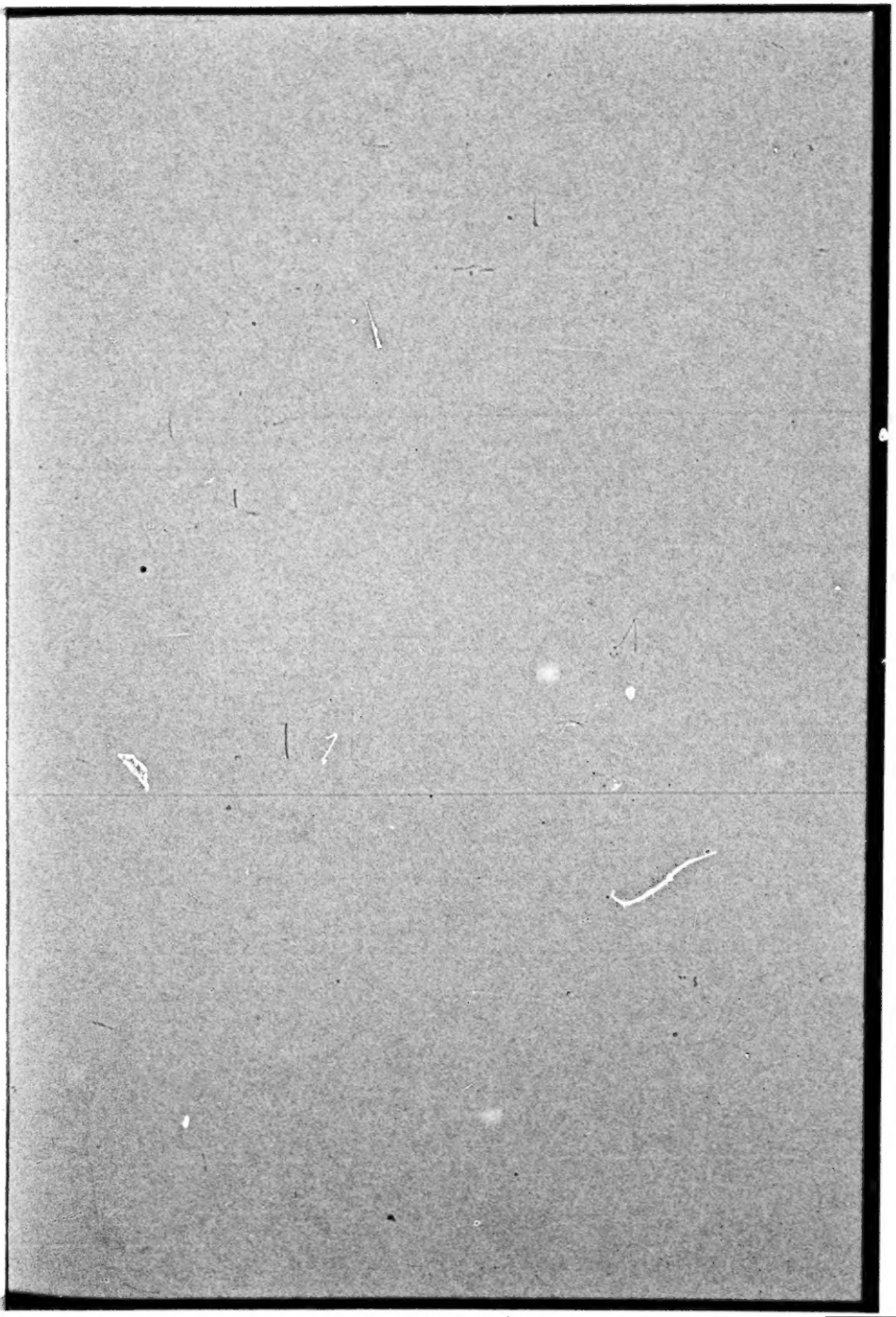

MICHAEL RODAK, JR.,

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1531

ALBERT JOHNSON, REV. EDDIE McBRIDE, JOHN FERGUSON, CHARLES CHIPLIN, ISSAC REMBERT, and JAMES ODELL DIXON,

Petitioners,

versus

STATE OF MISSISSIPPI, et al.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF FOR PETITIONERS

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Other Authorities:

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Note, *Federal Jurisdiction: The Civil Rights Removal Statute Revisited*, 1967 Duke L. J. 136 30,34

IN THE
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ALBERT JOHNSON, REV. EDDIE McBRIDE, JOHN FERGUSON, CHARLES CHIPLIN, ISSAC REMBERT, and JAMES ODELL DIXON,
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On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF FOR PETITIONERS

OPINION BELOW

The opinion of the Court of Appeals for the Fifth Circuit is reported at 488 F.2d 284, and is reproduced in Appendix B of the Petition (pp. 6a-13a). The order of the Court of Appeals denying petitioners' petition for rehearing and rehearing en banc and the dissenting opinion of Chief

Judge John R. Brown joined by four other judges is reported at 491 F.2d 94, and is reproduced in Appendix A of the Petition (pp. 1a-5a).

JURISDICTION

The Court of Appeals entered judgment on January 14, 1974 and denied rehearing en banc on March 15, 1974.[1] The petition for writ of certiorari was filed April 12, 1974 and was granted on October 21, 1974. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1) and 28 U.S.C. § 1447(d).

QUESTION PRESENTED

Whether under *Georgia* v. *Rachel*, 384 U.S. 780 (1966), petitioners may remove the criminal prosecutions against them to Federal court pursuant to the civil rights removal statute, 28 U.S.C. § 1443(1), to protect their exercise of rights specifically protected from official interference by Title I of the Civil Rights Act of 1968, 18 U.S.C. § 245(b).

STATUTORY PROVISIONS INVOLVED

1. 28 U.S.C. § 1443(1) provides in relevant part:

§ 1443. Civil rights cases

Any of the following civil actions or criminal prosecutions, commenced in a State Court may

1 By order of Circuit Judge Dyer entered April 1, 1974, the mandate of the Court of Appeals was stayed pending final disposition by this Court.

be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:

(1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof; . . .

* * *

2. 18 U.S.C. § 245(b)(§ 101(a) of the Civil Rights Act of April 11, 1968) provides in relevant part:

§ 245. Federally protected activities

* * *

(b) Whoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with —

(1) any person because he is or has been, or in order to intimidate such person or any other person or class of persons from —

* * *

(B) participating in or enjoying any benefit, service, privilege, program, facility,

or activity provided or administered by the United States;

* * *

(E) participating in or enjoying the benefits of any program or activity receiving Federal financial assistance; or

(2) any person because of his race [or] color, . . . and because he is or has been —

* * *

(B) participating in or enjoying any benefit, service, privilege, program, facility or activity provided or administered by any State or subdivision thereof;

(C) applying for or enjoying employment, or any perquisite thereof, by any private employer or any agency of any State or subdivision thereof, or joining or using the services or advantages of any labor organization, hiring hall, or employment agency;

* * *

(F) enjoying the goods, services, facilities, privileges, advantages, or accommodations of any inn, hotel, motel, or other establishment which provides

lodging to transient guest, or of any restaurant, cafeteria, lunchroom, lunch counter, soda fountain or other facility which serves the public and which is principally engaged in selling food or beverages for consumption on the premises, or of any gasoline station, or of any motion picture house, theater, concert hall, sports arena, stadium, or any other place of exhibition or entertainment which serves the public and (i) which is located within the premises of any of the aforesaid establishments or within the premises of which is physically located any of the aforesaid establishments, and (ii) which holds itself out as serving patrons of such establishments; or

* * *

(4) Any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from —

(A) participating, without discrimination on account of race [or] color, . . . in any of the benefits or activities described in subparagraphs (1)(A) through (1)(E) or subparagraphs (2)(A) through (2)(F); or (B) affording another person or class of persons opportunity or protection to so participate; or

(5) any citizen because he is or has been, or in order to intimidate such citizen or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination on account of race [or] color . . . in any of the benefits or activities described in subparagraphs (1)(A) through (1)(E) or subparagraphs (2)(A) through (2)(F), or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate — shall be fined not more than $1,000, or imprisoned not more than one year, or both; and if bodily injury results shall be fined not more than $10,000, or imprisoned not more than ten years, or both; and if death results shall be subject to imprisonment for any term of years or for life.

* * *

3. Miss. Code Ann. § 97-1-1 (1972) (conspiracy) provides in relevant part:

If two (2) or more persons conspire either:

* * *

(f) To commit any act injurious to the public health, to public morals, trade or commerce, or for the perversion or obstruction of justice, or of the due administration of the laws;

* * *

such persons, and each of them, shall be guilty of a felony and upon conviction shall be fined not less than five hundred dollars ($500.00) nor more than five thousand dollars ($5,000.00) or shall be

imprisoned not less than one (1) year nor more than five (5) years or both.

Provided, that where the crime conspired to be committed is a misdemeanor, then upon conviction said crime shall be punished as a misdemeanor as provided by law.

STATEMENT OF THE CASE

A. The Facts.

Through picketing, protest marches, demonstrations, a selective buying campaign, and mass meetings petitioners sought peacefully to eliminate racial discrimination in public and private employment, law enforcement, the administration of justice, and governmental services and to publicize the grievances of the Black citizens of Vicksburg, Mississippi. Petitioners, with other residents of the Black Vicksburg community, were thereupon arrested in May, 1972, while participating lawfully in such speech and peaceful assembly.

Prior to the picketing and demonstrations, the grievances and demands of the Black community were discussed with the city officials and merchants (App. 52, 54-55, 57, 68, 93-94).[2] When the grievances were not satisfied, petitioners helped organize and participated in (1) a primary economic boycott, or selective buying campaign, of the local white-owned businesses publicized by word-

2 The abbreviation "App." refers to pages of the printed Appendix, the abbreviation "Tr." refers to pages of the Trial Transcript of testimony taken at the remand hearing, and the abbreviation "R." refers to pages of the Record on appeal, which includes the pleadings.

of-mouth and picketing for the purpose of gaining equal treatment and equal employment opportunities in those businesses (R. 5, App. 22, 49, 53, 56, 58-59, 66-67, 69, 91), and (2) peaceful picketing, leafleting, protest marches, and mass meetings protesting and seeking an end to racial discrimination in employment and services in city and county government and governmental agencies (R. 5, App. 22, 31-32, 37-38, 49-50, 53, 56, 64, 66-67, 69, 91).

The picketing, leafleting, and selective buying campaign began in late March, 1972, and continued until early May. Groups of demonstrators and their leaders were arrested *en masse* on May 2, May 13, and May 14 (App. 3-17). A total of 49 demonstrators were forcibly arrested by armed Vicksburg police, jailed, and charged not with any threatening or violent conduct, but with the vague charge of conspiracy to commit "acts injurious to trade or commerce" pursuant to the Mississippi general conspiracy statute, Miss. Code Ann. § 97-1-1 (1972) (formerly Miss. Code Ann. § 2056(6) (1956 Recomp., Supp. 1972)).[3] After their arrests, petitioners initially were held in jail on excessive bail of $5,000 (R. 6, 27), which was equal to the

3 At the remand hearing in the District Court, the State asserted that all the demonstrators arrested on May 2, 13, and 14

> "are presently charged under Section 2056 of the Mississippi Code [now § 97-1-1] which is a general conspiracy statute containing a number of subparagraphs. The subparagraph used in this particular instance is where it is declared to be a crime to enter into a conspiracy harmful to trade or commerce." App. 30.

The arrest affidavits (App. 3-17) tracked the language of that statute. However, the trial court, and then on appeal the State, abandoned that claim; and contrary to the language of the arrest affidavits the trial court held, and the State represented to the Fifth Circuit, that the arrests were instead predicated on Miss. Code Ann. § 97-23-85 (1972) (secondary boycott) and § 97-23-83 (1972) (threats and coercion). The record in the trial court is devoid of any direct evidence that any of the petitioners committed any unlawful acts under these statutes. See pp. 10-13, *infra*.

maximum fine under the statute, forcing some to spend two days in jail while bail was being raised (App. 34, 64-65). Subsequently, bail was reduced categorically to $1,000 for those over 60 years of age and $1,500 for those under 60 years of age (R. 6, 27).

The testimony taken at the remand hearing shows that the arrests were made in bad faith without hope of ultimate success for the purpose of harassing petitioners in the peaceful exercise of their right to protest racial discrimination. Most of the demonstrators, including several of the petitioners, were arrested while picketing and carrying signs protesting racial discrimination (App. 56), and the remainder were arrested because of their participation in the civil rights protest activities.

For example, petitioner Rev. Charles Chiplin was arrested both on May 2 and on May 13 while walking with a picket sign and protesting racial discrimination in hiring and in the administration of justice (App. 90-91):

> "On May 2 I was walking up Washington Street with a picket sign, and an officer stopped me and said, 'You are under arrest.' " (App. 90)

Bennie Young was arrested with a group of about 30 other demonstrators on May 13 after he had carried a picket sign for about a block and a half from the assembly point protesting racial discrimination in city government employment and law enforcement (App. 31-33, 37-38). Petitioners Rembert and Dixon were arrested with a group of 17 demonstrators and protest leaders on May 2 (App. 4, 23), and petitioner Dixon was arrested again with a group of demonstrators on May 13 (App. 5, 23).

Petitioner Albert Johnson, who was arrested for his participation in the picketing on May 2 (App. 4, 23), and May 13 (App. 13, 24), was arrested again on May 21 for intimidating and coercing on the complaint of one James Sturgis (R. 34). Mr. Sturgis did not testify at the remand hearing; and Chief Brown, who was not present when the alleged incident occurred, could only testify that he had received a complaint from Mr. Sturgis (App. 109). Eddie Thomas, who testified as a witness for the petitioners, was present when the alleged incident took place and indicated that no threats or intimidation on Johnson's part had occurred (App. 70-73).

Petitioners Rev. Eddie McBride and John Ferguson, two of the leaders of the civil rights protest activity (App. 53, 57), were arrested directly after the May 2 picketing (App. 52), and petitioner McBride was arrested again on May 13 while picketing (App. 52) on four identical conspiracy charges (App. 11, 14-16), all because of their participation in the demonstrations (App. 126). While petitioner Ferguson was being booked he heard the Chief of Police state that "anybody on the street with a picket sign would be arrested" (App. 51).

The petitioners and their witnesses testified at the remand hearing that the demonstrators had been carefully and repeatedly instructed to picket peacefully and not to interfere unlawfully with any shoppers (App. 33-34, 53-54, 76, 86, 91, 100, 102), and that there was no violence, no threats or intimidation, and no forcible or threatening efforts by the demonstrators to keep customers out of stores (App. 33-34, 38, 53-56, 60-61, 67-68, 74-76, 88, 90-96, 102).

The arrest affidavits themselves (App. 3-17) all are boiler plate and fail to state any underlying facts to support the arrests. Chief Brown, the only witness for the State, executed the arrest affidavits which resulted in the arrests but did not personally observe the commission of any offense (App. 122, 125, 131, 134). No merchant or shopper testified that any of the demonstrators had interfered with trade or commerce.

At the remand hearing, the State contended only that the petitioners were arrested for conspiracy in restraint of trade (App. 30) under present Miss. Code Ann. § 97-1-1(f) (1972). However, District Judge Harold Cox himself *ex mero motu* changed the charges (App. 132-33) and invoked a series of amendments and enactments passed by the Mississippi Legislature in 1966 and 1968 in response to civil rights protest and boycott activity, including state statutes punishing secondary boycotts (Pet., App. D, p. 17a),[4] use of boycott to accomplish an unlawful purpose (Pet., App. D., pp. 17a-18a, n. 3),[5] and threats and coercion (Pet., App. D, p. 18a, n. 4).[6]

However, the findings of the trial court that petitioners were arrested for unprotected activity are clearly erroneous. Rule 52(a), F.R. Civ. P. The testimony is clear

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4 Miss. Code Ann. § 97-23-85 (1972), formerly Miss. Code Ann. § 2059.3 (1956 Recomp.) (Supp. 1972).

5 Miss. Code Ann. § 97-7-19 (1972), formerly Miss. Code Ann. § 2059.2 (1956 Recomp.) (Supp. 1972).

6 Miss. Code Ann. § 97-23-83 (1972), formerly Miss. Code Ann. § 2384.5 (1956 Recomp.) (Supp. 1972).

— and uncontradicted[7] — that the boycott activity against the merchants was not to create "an economic injury to these merchants with whom they actually had no quarrel" (Pet., App. D, p. 17a), but rather was a protest against their discriminatory employment practices, a goal specifically protected by § 245(b)(2)(C):

> "Q. Which white merchant did you have a particular complaint about, any specific complaint about?
>
> A. It wasn't specific, it was collectively. I felt that they all could aid in giving better and more jobs to black people.
>
> * * *
>
> The things that the black people of Vicksburg are asking for are in conjunction, basically in conjunction with both the city officials and the merchants; the activities of the merchants in not allowing more black people to work other than janitorial positions are uncalled for because there are sales people and managerial type people in Vicksburg who are qualified and able to do a good job. Basically, I think it's good business for businessmen to hire black people." App. 58, 66-67 (Ferguson testimony).

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7 The District Court apparently relied upon a March 23, 1972, letter from the "Black Concerned Citizens of Vicksburg" to the Vicksburg Chamber of Commerce for a statement of the protesters' demands (Pet., App. D, p. 16a). However, from the text of the letter (App. 135-36) it is clear that those demands were stated only as a condition precedent to future meetings, not as the goals of the protest activity, which were stated in the oral testimony.

Although Vicksburg Police Chief Marion R. Brown, at whose direction all the arrests were made, testified that there had been interference with and harassment of shoppers by unnamed and unknown persons, a close reading of his testimony reveals that his notion of interference consisted primarily of free speech activity informing shoppers of the boycott (App. 112-14).[8] He testified that he had received some complaints from Blacks of anonymous threatening telephone calls, but the unlawful activities of others cannot provide a basis for the suppression of protected free speech activity. Chief Brown had no information that any of the petitioners had engaged in any unlawful activities:

> "Q. My question would be this then, Chief Brown, do you have any information as to particularly the petitioners that are charged committing any of the [unlawful] acts, if in fact these acts occurred?
> A. No, I don't know." App. 124.

The sole and exclusive basis for these arrests was petitioners' civil rights protest activities:

> "BY THE COURT:
> Do you know what he [petitioner Ferguson] was arrested for and accused with?

8 When asked what the picketers were doing prior to their arrests, Police Chief Brown testified that they would

> "Stop people, just reach out and stop a person that would have a package in his hand. I heard Albert Johnson, I heard James Chiplin, and several others, Victor Parsons, tell people that they were not suppose [sic] to be downtown shopping that there was a boycott on." (App. 114).

BY THE WITNESS [Chief Brown]:
He was arrested, I believe, on May 2, with the first group that was arrested. He has actually participated in the boycott, and in fact, at the beginning he was very actively participating in it.

* * *

BY MR. WINFIELD:
Q. Do you not know of any intimidation that Mr. Ferguson —
A. The only thing I've seen him, I've seen him actually carry a picket sign, I've seen him stopping people on the street and talking to them.
Q. Was that unlawful?
A. No, there's nothing unlawful about stopping a person and talking." App. 126.

These arrests broke the back of the civil rights protest movement and ended the picketing (App. 96). When asked by the District Judge whether picketing was continuing, petitioner John Ferguson responded:

> "No, it isn't going on now for the simple reason that if anyone gets on the street with a picket sign they will be charged with criminal conspiracy, and the bail is astronomical." (App. 50)

While petitioners' appeal was pending, and after the picketing had been successfully halted, the charges against the original 49 petitioners were presented to the Warren County grand jury, and the grand jury returned

no true bills against 43 of the 49 arrested demonstrators (App. 140-41). All charges against the 43 protesters have been dropped (id.). However, the six leaders and principal activists of the protest movement (App. 36-37, 49, 90), who are the petitioners here, were indicted for conspiracy to restrain trade and commerce (App. 142-43).

B. Judicial Proceedings.

The 49 arrested demonstrators filed their verified petition for removal on May 25, 1972 (R. 1-25), and an amended petition on June 1, 1972 (App. 19-28), removing the criminal prosecutions against them from the City Court of Vicksburg and the County Court of Warren County to the United States District Court for the Southern District of Mississippi pursuant to the civil rights removal statute, 28 U.S.C. § 1443. The petitioners asked that the removal be sustained and the charges against them dismissed. In their petition, the demonstrators alleged that all their civil rights protest activity was conducted in a "lawful and peaceful manner" (App. 22) and "in the exercise of rights guaranteed to petitioners by Title I of the Civil Rights Act of 1968, 18 U.S.C. 245." (App. 25). They alleged that the charges against them "have no basis in fact" and were brought

> "solely and exclusively for the purpose and effect of depriving petitioners of their Federally protected rights, including by force or threat of force, punishing, injuring, intimidating, and interfering, or attempting to punish, injure, intimidate, and interfere . . . with petitioners, and the class of persons participating in the Warren County boycott and demonstrations, for the exer-

> cise of their rights peacefully to protest discrimination and to conduct and publicize a boycott which seeks to remedy the denial of equal civil rights . . . which activities are protected by 18 U.S.C. § 245." App. 25-26.

Petitioners alleged that as a result of the arrests and state criminal prosecutions they "are denied and cannot enforce their rights asserted under 18 U.S.C. 245" in the courts of the state "because that statute protects those who are arrested for exercising the rights . . . conferred by that statute, not only from conviction in state courts, but also from prosecution in those courts."[9] App. 26.

After an evidentiary hearing on the State's motion to remand the prosecutions, District Judge Harold Cox remanded the cases back to the state court on January 4, 1973 (Pet., Appendix D, pp. 15a-25a; App. 137) on the ground that petitioners "were not engaged at the time in the discharge, or performance of any federally protected right or activity. * * * This petition does not in any wise or to any extent involve the exercise by these petitioners of any federally protected right such as public accommodation, peaceful picket and the like [footnote omitted]." Pet., App. D, p. 19a. On appeal, the Fifth Circuit affirmed the District Court's remand order based solely on its interpretation of the removal statute. 488 F.2d 284 (5th Cir. 1974). The Court of Appeals held that petitioners had a

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9 Simultaneously, the petitioners also filed a complaint pursuant to 42 U.S.C. § 1983 seeking injunctive relief against the arrests and prosecutions in a companion action, *Concerned Citizens of Vicksburg v. Sills*, Civil No. 72W-18(N) (S.D. Miss. filed May 24, 1972), but the District Court denied temporary injunctive relief which would have held the prosecutions in status quo pending a final hearing on the merits (Order of May 26, 1972). A final hearing in that action has not yet been held, and is not part of this appeal.

right to engage in free speech and picketing activity, which was protected from official interference by 18 U.S.C. § 245(b), and that § 245 "clearly deals with equal civil rights" (488 F.2d at 286). But the Court of Appeals ruled that removal of criminal prosecutions was precluded as a matter of law here because § 245(b), as a criminal statute, is not a statute "providing" for the equal civil rights of citizens within the meaning of the civil rights removal statute, 28 U.S.C. § 1443(1). In essence, the Court of Appeals held that removal under § 1443(1) can be predicated only on Congressional enactments explicitly providing civil sanctions because a criminal statute, regardless of its express provisions and Congressional intent, has not "*created* a new legal right" and therefore cannot be a law which "*provides* for . . . equal civil rights" (488 F.2d at 287, emphasis in original).[10]

After the adverse panel decision, petitioners' petition for rehearing en banc was denied by a 10-5 vote of the full court. 491 F.2d 94 (5th Cir. 1974) (en banc). Chief Judge John R. Brown, joined by four other judges of the Fifth Circuit, dissented from the denial of the rehearing en banc on the grounds that the issue was "of recurring transcendent importance" and the panel's decision "is doubtful if not erroneous" (491 F.2d at 94). Adhering to his prior dissents in *Perkins* v. *Mississippi*, 455 F.2d 7, 11-61, on rehearing en banc, 470 F.2d 1371, 1371-73 (5th Cir. 1972), Chief Judge Brown maintained that the obvious

10 Because the Fifth Circuit determined that petitioners were not entitled to removal as a matter of law, review in this Court should proceed on the assumption that petitioners' activity falls entirely within 18 U.S.C. § 245(b). If this Court reverses the legal conclusion of the Fifth Circuit, then this Court may make an independent examination of the record to determine whether petitioners' activities come within the protections of § 245(b) or remand the case to the Court of Appeals for review of the factual contentions. See Argument IV, *infra*.

Congressional purpose behind 18 U.S.C. § 245 (preventing unwarranted interference with civil rights protest activity) and the broad scope of its prohibition (against attempted injury, intimidation or interference by force or threat of force) make it "a law *providing* for *equal* civil rights, satisfying the requirements of the civil rights removal statute" (491 F.2d at 94-95) (emphasis in original).

> "It is my opinion that the panel improperly concluded that § 245 is not a law providing for the equal civil rights of citizens within the meaning of the removal statute. The restrictive interpretation applied to § 245 refuses appellants their 'right' to peacefully protest racial discrimination free from the harassment of bad-faith prosecutions inspired by their activities.
>
> * * *
>
> "The foreboding result which excludes § 245 from the ambit of removal establishes a precedent which will prevent the federal courts from granting relief in future cases of spurious criminal prosecutions against persons protesting racial discrimination. Even worse, this ruling, if it is allowed to stand, leaves a large group of potential victims without effective personal redress for acts which run the gamut of crass, undisguised racial discrimination [footnote omitted]." (Id.)

ARGUMENT

Summary of Argument

The principles established in *Rachel* and *Peacock* control this Court's review of the legal question of statutory construction of whether Title I of the 1968 Civil Rights Act, 18 U.S.C. § 245(b), is a law which provides for equal civil rights stated in terms of racial equality *and* which protects petitioners even from state court prosecution for the exercise of rights secured by the statute. The Court of Appeals held that Section 245(b) could not qualify as such a law, within the meaning of the civil rights removal statute, 28 U.S.C. §1443(1), because as a criminal statute it was not a law which *provides* for equal civil rights. Such a distinction between civil and criminal statutes, however, is contrary to the intent of Congress and the prior decisions of this Court. And an analysis of the legislative intent and meaning of Section 245(b) shows that its protections, including from harassing state court prosecutions, are at least as broad as those provided by the civil rights statute successfully invoked in *Rachel*. Therefore, removal based on Section 245(b) is appropriate.

I. Georgia v. Rachel, 384 U.S. 780 (1966), Allows Removal Under Any Federal Law Providing For Specific Civil Rights Stated In Terms Of Racial Equality Which Forbids Harassing Prosecutions.

In the companion cases of *Georgia* v. *Rachel*, 384 U.S. 780 (1966) [hereafter *Rachel*], and *City of Greenwood* v. *Peacock*, 384 U.S. 808 (1966) [hereafter *Peacock*], this

Court established the meaning and scope of civil rights removal under 28 U.S.C. § 1443(1). In an exhaustive analysis of the history of civil rights removal legislation and litigation, this Court established the principles which control the decision on removal in this case. To succeed here, defendants petitioning for removal of their state criminal prosecutions to federal court need only show that:

1. The right upon which they rely is a "right under any law providing for . . . equal civil rights," 28 U.S.C. § 1443(1), "stated in terms of racial equality." *Rachel*, 384 U.S. at 792; see also *Peacock*, 384 U.S. at 825; and

2. "Mere pendency of [state court criminal] prosecution enables the federal court to make the clear prediction that the defendants will be 'denied or cannot enforce in the courts of [the] State' [28 U.S.C. § 1443(1)]" the protected right. *Rachel*, 384 U.S. at 805; *Peacock*, 384 U.S. at 826-828.[11]

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11 In *Rachel*, as in this case (see Argument III, *infra*), such a "prediction" is a *certainty* because the rights protected by statute include the right to be free from *any* state court prosecution:

> "In these circumstances . . . the burden of having to defend the prosecutions is itself the denial of a right explicitly conferred by the [statute.]" (384 U.S. at 805)

Therefore, in this case this Court need not determine in what *other* situations "it can be clearly predicted by reason of the operation of a pervasive and explicit state or federal law that those rights will inevitably be denied by the very act of bringing the defendant to trial in the state court.'" *Peacock*, 384 U.S. at 828.

In *Rachel* civil rights demonstrators were arrested for criminal trespass[12] allegedly for seeking nondiscriminatory service at restaurants prohibited from racial discrimination by Title II of the Civil Rights Act of 1964, 42 U.S.C. § 2000a, and their removal petitions were sustained by a unanimous Court. First, Title II of the Act, by "conferring a specific right of racial equality," qualified as a "law providing for . . . equal civil rights" within the meaning of § 1443(1). 384 U.S. at 793-94. Second, because § 203(c) of that Act prohibited any "attempt to punish" persons for exercising Title II rights, petitioners were immunized against state prosecutions for protected conduct —

> "*any* proceedings in the courts of the State will constitute a denial of the rights conferred by the Civil Rights Act of 1964 * * * It is no answer in these circumstances that the defendants might eventually prevail in the state court [footnote omitted]. The burden of having to defend the prosecutions is itself the denial of a right explicitly conferred by the Civil Rights Act of 1964 * * *." 384 U.S. at 804-05.

No showing was required either (a) that the Georgia criminal trespass statute was unconstitutional or in conflict with the Federal Act on its face (384 U.S. at 805), or (b) that the Georgia courts would not recognize petitioners' Federal claims that the statute was invalid as applied (id.). By forbiding any "attempt to punish" persons for

12 "It shall be unlawful for any person, who is on the premises of another, to refuse and fail to leave said premises when requested to do so by the owner or any person in charge of said premises or the agent or employee of such owner or other such person in charge. * * *" Ga. Code Ann. § 26-3005 (Supp. 1965).

protected activity (384 U.S. at 793), § 203(c) of the Act "prohibits prosecution" (id.), and therefore provides persons a right "not even to be brought to trial on these charges in the [state] . . . courts" (id. at 794).

By contrast, in *Peacock* removal of assorted prosecutions allegedly for picketing and demonstrating in support of voter registration activity was denied. First, the constitutional provisions invoked by petitioners, including the First Amendment, "clearly cannot qualify under the statutory definition as rights under laws providing for 'equal civil rights' " (384 U.S. at 825) stated in terms of racial equality. Second, although petitioners did invoke two equal civil rights laws — 42 U.S.C. §§ 1971 and 1981 — their protest activity in support of voter registration (as opposed to voting itself) did not come within the protection of either statute,[13] and their conduct was not protected by a Federal equal rights statute which "confers immunity from state prosecution on such charges" (384 U.S. at 827).[14]

13 42 U.S.C. § 1971(b) only protected from official interference the right of persons "to vote or to vote as he may choose" (*Peacock*, 384 U.S. at 811, n. 3), and did not cover voter registration activity. Subsequent to the removals in *Peacock*, Congress enacted § 11(b) of the Voting Rights Act of 1965, 42 U.S.C. § 1973i(b), which specifically prohibits official interference with "urging or aiding any person to vote or attempt to vote." "Vote" is defined specifically to include voter registration activity, 42 U.S.C. § 1973*l*(c)(1). Removal of spurious and pretextual state prosecutions to intimidate persons engaged in protected voter registration activity subsequently has been sustained. *Whatley* v. *City of Vidalia*, 399 F.2d 521 (5th Cir. 1968).

14 The constitutional provisions invoked by petitioners in *Peacock* were held to provide an ultimate defense against *conviction* for Federally protected activity, but none of them specifically applicable to petitioners granted an express Federal statutory right to be free of *arrest and prosecution* for their conduct. *Peacock*, 384 U.S. at 827-31. The Court held that removal cannot be predicated upon a right not to be convicted; rights which ordinarily are asserted as defenses in a state court prosecution and which, if not honored in state court, can be vindicated by appeal to the Supreme Court or by Federal habeas corpus (384 U.S. at 829).

Thus, under *Rachel* and *Peacock* removal turns upon whether the Federal law invoked by petitioners provides for the right not to be prosecuted because of protected activity *(Rachel)* or merely provides an ultimate defense against conviction for that activity *(Peacock)*. Civil rights removal is not restricted exclusively to trespass prosecutions for the exercise of rights protected by Title II of the Civil Rights Act of 1964. Cf. *Walker* v. *Georgia*, 417 F.2d 1, 5 (5th Cir. 1969) (Tuttle, J.). Removal is justified under "any law" (§ 1443(1)) — which includes "both existing and future statutes" (*Rachel*, 384 U.S. at 790) — which provides for "specific civil rights stated in terms of racial equality" (*Rachel*, 384 U.S. at 792) when those rights "will inevitably be denied by the very act of bringing the defendant to trial in the state court" (*Peacock*, 384 U.S. at 828).[15]

In 1968 Congress enacted Title I of the Civil Rights Act of 1968, codified as 18 U.S.C. § 245. Section 245(b)(5) protects against official interference persons "participating lawfully in speech or peaceful assembly opposing any denial of the opportunity" to enjoy the listed benefits and activities *free from racial discrimination*. In the following Argument we will show that the requirements for civil rights removal pursuant to 28 U.S.C. §1443(1) set out in *Rachel* and *Peacock* are squarely met, and that this case is not rationally distinguishable from *Rachel*. First, as the Court of Appeals recognized, § 245(b) "clearly deals with equal civil rights" (488 F.2d at 286) stated in terms of racial equality. Second, as the Court of

15 The generic phrase of § 1443(1) remains "open-ended," *Rachel*, 384 U.S. at 789; "A precise definition of the limitations of the phrase 'any law providing for . . . equal civil rights' in § 1443(1) is not a matter we need pursue to a conclusion * * *" *Peacock*, 384 U.S. at 825.

Appeals also noted, § 245(b) "forbids certain forms of harassment such as the bringing of spurious criminal charges" (id. at 287). By forbidding "attempts to . . . intimidate or interfere with" protected activity, § 245(b) in language functionally identical to that relied upon in *Rachel provides for a right* not to be arrested or prosecuted for activity protected by the statute, including the petitioners' civil rights protest activity. Thus, petitioners are "denied or cannot enforce" within the meaning of § 1443(1) their § 245(b) right to be free of state interference "by the very act of bringing [them] to trial in the state court."

II. Section 245(b) Is A "Law Providing For . . . Equal Civil Rights" Within The Meaning Of The Civil Rights Removal Statute.

18 U.S.C. § 245(b), by its language and purpose, clearly qualifies under the *Rachel* definition of a "law providing for . . . equal civil rights" as a Federal law "providing for specific civil rights stated in terms of racial equality" (384 U.S. at 792). First, as the Fifth Circuit correctly noted, § 245(b) "clearly deals with equal civil rights" (488 F.2d at 286). The statute prohibits any person, whether or not acting under color of law, from interfering with any other person "because of his race [or] color" and because of his participation in the benefits and activities listed in subparagraphs (2) (A) through (F) in a racially nondiscriminatory fashion. In subparagraph (5), the statute also prohibits interference with

> "any citizen because he is or has been, or in order to intimidate such citizen or any other citizen

> from lawfully aiding or encouraging other persons to participate, *without discrimination on account of race* [or] *color* . . . in any of the benefits or activities described in subparagraphs (1) (A) through (1) (E) or subparagraphs (2) (A) through (2) (F), or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate —" (Emphasis added.)

The purpose of the statute is to prohibit and deter racially-motivated interference with the enjoyment of the specified benefits and activities, and further to protect against racially-motivated interference those who engage in speech and peaceful assembly opposing any denial of the opportunity to so participate. S. Rep. No. 721, 90th Cong., 1st Sess., pp. 3-6 (1967); H.R. Rep. No. 473, 90th Cong., 1st Sess., pp. 3-7 (1967).

This statute is almost identical to Title II of the Civil Rights Act of 1964, 42 U.S.C. § 2000a et seq., successfully invoked in *Rachel*, because it — like Title II — prohibits interference with persons exercising their right of equal access to places of public accommodations. See § 245(b)(2)(F). The statute protects the exercise of rights secured by pre-existing Federal civil rights legislation, e.g., the Civil Rights Act of 1964 and the Voting Rights Act of 1965; but it also creates new equal civil rights by going beyond the coverage of Titles II (public accommodations) and VII (employment) of the Civil Rights Act of 1964, see S. Rep. 721, 90th Cong., 1st Sess., pp. 6-7 (1967); H.R. Rep. No. 473, 90th Cong., 1st Sess., p. 5 (1967). For the first time, the statute protects persons not only "participating" in the exercise of equal civil rights, but also protects persons "affording another person or class

of persons opportunity or protection to so participate" (§ 245(b)(4)(B)); persons "encouraging other persons to participate"; and persons "participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate" (§ 245(b)(5)).

Second, the above-quoted language and the legislative history of the statute clearly reveal that by enacting this statute Congress intended to impose on state officials and private persons a duty not to interfere with peaceful civil rights protest activities opposing discriminatory denial of the listed benefits and activities, and to provide a correlative right on the part of civil rights demonstrators to be free of such interference. The President and Congress were concerned that existing legislation — particularly 18 U.S.C. §§ 241 and 242 — was inadequate because it failed to specify in clear and precise terms what conduct was prohibited, because of problems of proof encountered in enforcing existing statutes (conspiracy, specific intent), and because it appeared that state and local authorities were slow, unwilling, or unable to act effectively to remedy forcible interference with peaceful civil rights activity. 114 Cong. Rec. 820 (1968) (civil rights message of President Lyndon B. Johnson); S. Rep. 721, 90th Cong. 1st Sess., pp. 4-6 (1967); H.R. Rep. No. 473, 90th Cong., 1st Sess., pp. 3-7 (1967). The Congressional purpose of the new legislation was to provide additional and specific protections against racially-motivated interference with civil rights, particularly to civil rights demonstrators opposing racial discrimination:

> "The bill would *protect* persons who urge or aid participation in the protected activities, as well as those who engage in speech or peaceful

assembly opposing denial of the opportunity to so participate." S. Rep. No. 721, 90th Cong., 1st Sess., p. 4 (1967) (emphasis added). See also, H.R. Rep. 473, 90th Cong., 1st Sess., p. 3 (1967).

Finally, the legislative history makes clear that the statute was designed to *provide* a *right* to be free of proscribed interference "by deterring and punishing forcible interference with the exercise of Federal *rights*." (S. Rep. 721, 90th Cong., 1st Sess., p. 6 (1967) (emphasis added)):

"The bill before us would *provide* Federal *protection*, wherever needed, when specific *rights* are violated. This bill clearly spells out exactly what those *rights* are." 114 Cong. Rec. 669 (1968) (remarks of Senator Scott) (emphasis added).

"In essence it protects the *rights* granted by the Civil Rights Act of 1964 and 1965 and, more fundamentally, by the Constitution itself. Those *rights* must not be frustrated. They *must not* be made the prey of violence or intimidation." 114 Cong. Rec. 3806 (1968) (remarks of Senator Mansfield) (emphasis added).

"This bill *will protect* men of all races *who seek to exercise and to afford others the federal rights* which Congress has affirmed during the past decade — men who would follow the road of dignity and peace on which Dr. Martin Luther King marched." 114 Cong. Rec. 9570 (1968) (remarks of Rep. Rosenthal) (emphasis added).

> "The bill *also protects* the *right* of every citizen to enjoy and partake of public expression in free speech . . ." 113 Cong. Rec. 22671 (1967) (remarks of Rep. Madden) (emphasis added).
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> "We must *guarantee* each individual and group their constitutional *rights* of freedom of speech and assembly. Due protection of law must be afforded every individual or group to peacefully assembly, to speak and to protest." 113 Cong. Rec. 22772 (1967) (remarks of Rep. Esch) (emphasis added).

The Court of Appeals, therefore, erred when it held that removal was precluded because "§ 245 is exclusively a criminal statute" and "confers no rights whatsoever" (488 F.2d at 287). The Court below cites no authority for its unique view that rights are "provided" only by statutes imposing civil sanctions and not by statutes providing criminal sanctions. Certainly there is no support in *Rachel* or *Peacock* for such a distinction:

> "That these federally protected rights are set forth in terms of prohibition against their interference, and that criminal sanctions are imposed for their violation, does not take them out of the *Rachel* rationale since they are nevertheless contained in a "law providing for specific civil rights stated in terms of racial equality." There is nothing in the Supreme Court's opinion in *Rachel* to indicate any limitation or restriction on removal because the law is accompanied by criminal penalties rather than

civil remedies." *Perkins* v. *Mississippi*, 470 F.2d 1371, 1373 (5th Cir. 1972) (en banc) (Ainsworth, J., dissenting).

Such a holding is contrary to the express language of § 245(b) and the clear intent of Congress.

Nor does the court below cite any other authority — statutory, natural law, or divine — for its view that criminal statutes cannot "provide" rights within the meaning of the removal statute. In contrast, in several significant instances, this Court has allowed civil rights removal to protect rights secured by statutes which provided criminal penalties for their violation. Yet, the Court of Appeals rejected removal to protect § 245 rights for the reason that there was no comparison between § 245 and the "model" of the Civil Rights Act of 1866 cited by this Court in *Georgia* v. *Rachel, supra* (488 F.2d at 287). In so doing the Fifth Circuit completely overlooked the fact that Section 2 of the 1866 Act provided criminal penalties for its violation. Civil Rights Act of April 9, 1966, ch. 31, § 2, 14 Stat. 27.[16] Further, this Court indicated in the earliest removal cases that rights provided by an ex-

16 The Civil Rights Act of April 9, 1966, of which present § 1443 is a "direct descendant" (*Rachel*, 384 U.S. at 786), in Section 1 (now included in 42 U.S.C. § 1981) secured for all citizens "of every race and color" the same rights as are "enjoyed by white citizens," including the right "to full and equal benefit of all laws and proceedings for the security of persons and property" and "shall be subject to like punishment, pains, penalties, and to none other." 14 Stat. 27. Section 2 provided maximum criminal penalties of $1,000 or one year imprisonment, or both, for any deprivation under color of law of the rights secured by the Act. Id. Section 3, the removal section, provided for removal to Federal court by "persons who are denied or cannot enforce . . . the rights secured to them by the first section of this act . . ." Id. In *Rachel* this Court held that in enacting present § 1443, Congress intended to include any law "comparable in nature to the Civil Rights Act of 1866" (384 U.S. at 790) and that "the model for the phrase 'any law providing for . . . equal civil rights' . . . was the Civil Rights Act of 1866" (id. at 791).

clusively criminal statute punishing racial discrimination in jury selection, Act of March 1, 1875, ch. 114, § 4, 18 Stat. (Pt. 3) 336, now codified as 18 U.S.C. § 243 (and therefore, at least in the United States Code, a companion statute to the one invoked here), if denied by conflicting state law could be protected by § 1443 removal of criminal prosecutions. *Gibson* v. *Mississippi*, 162 U.S. 565, 580 (1896); *Neal* v. *Delaware*, 103 U.S. 370, 385-86 (1881); *Virginia* v. *Rives*, 100 U.S. 313, 321 (1880). See Note, *Federal Jurisdiction: The Civil Rights Removal Statute Revisited*, 1967 Duke L.J. 136, 154, n. 90.

None of the civil rights statutes for which removal has been allowed expressly stipulate removal as a remedy. The language of the removal statute is generic, and removal is to be allowed to protect rights secured by *any* Federal statute "providing for . . . equal civil rights." Clearly Section 245 is, therefore, comparable in every respect to other statutes — criminal and civil — which this Court has previously held "*provide*" equal civil rights:

> "In both its purpose (preventing unwarranted interference with the exercise of Federally protected equal civil rights) and the scope of its prohibition (against attempted injury, intimidation or interference by force or threat of force) § 245(b) is indistinguishable from the relevant provisions of the 1964 Civil Rights Act held sufficient to support removal jurisdiction in *Rachel*." *Perkins* v. *Mississippi*, 455 F.2d 7, 42-43 (5th Cir. 1972) (Brown, C.J., dissenting).

The Court below erred when it excluded "exclusively criminal" statutes from the coverage of 28 U.S.C. § 1443(1) as a matter of law.

III. Petitioners By These Arrests And Prosecutions Are "Denied [And] Cannot Enforce" In State Court Their Rights Secured By 18 U.S.C. Section 245(b).

A. By Prohibiting Official Interference with Civil Rights Protest Activity, Section 245(b) Provides for a Right Not to be Arrested or Prosecuted for Protected Activity.

18 U.S.C. § 245(b) by its express terms secures to petitioners more than the right eventually to prevail in state court; it specifically by its terms protects persons exercising rights under that statute from anyone who

> "whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with —

the exercise of secured rights. The broad language chosen by Congress, "by force or threat of force," covers any threatening conduct designed to interfere with protected rights or to punish victims for their exercise of protected rights. The phrase "whether or not acting under color of law" specifically includes law enforcement and judicial officers. The Committee reports indicate that the bill

"would prohibit forcible interference . . . by public officers," S. Rep. 721, 90th Cong., 1st Sess., p. 6 (1967); H.R. Rep. 473, 90th Cong., 1st Sess., p. 3 (1967). Thus, the broad prohibitions of the statute precisely cover the forcible arrests of the petitioners here and attempts to punish them for their peaceful exercise of protected civil rights protest activity:

> "Obviously, then, the bill directs itself to inhibiting, to constraining, to controlling, to prohibiting, the willful exercise of improper authority or unlawful authority or excessive authority on the part of local law enforcement officials, many of whom are charged with carrying out and protecting the very provisions of this bill." 113 Cong. Rec. 22758 (1967) (remarks of Rep. Wright).[17]

The Court of Appeals conceded in its opinion that this prohibition against even attempted injury, intimidation or interference by force or threat of force was sufficiently broad to forbid "certain forms of harassment such as the bringing of spurious criminal charges" (488 F.2d at 287). Like the statute invoked in *Rachel*, the equal civil rights statute invoked here both (1) protects petitioners' Federal right to engage in conduct, for example, picketing and persuading shoppers not to patronize discriminatory merchants, and (2) provides the further statutory Federal right that state officials should not even attempt to arrest or prosecute petitioners, or otherwise forcibly intimidate or interfere with them, because of their protected conduct.

17 "The bill . . . prohibits public interference of any of the specified activities by individuals acting alone, as well as by police officers acting under color of law." 113 Cong. Rec. 22671 (1967) (remarks of Rep. Madden).

The vague and overbroad provisions of Miss. Code Ann. § 97-1-1(f) (1972) under which the demonstrators were arrested, which generally punish a conspiracy "to commit any act injurious . . . to public morals, trade or commerce," were interpreted by the arresting officer to proscribe this Federally protected activity. This created a conflict between the explicit protections of the Federal equal rights statute and state law. Thus, § 245(b), like the 1964 Civil Rights Act invoked in *Georgia* v. *Rachel, supra,* substitutes a Federal right for a state crime, cf. *Rachel,* 384 U.S. at 805-05; *Hamm* v. *City of Rock Hill,* 379 U.S. 306, 314 (1964), and immunizes petitioners' conduct not only from conviction, but also from prosecution in state court.

Although the statute in *Rachel* specifically provided that "No person shall . . . punish or attempt to punish" any person for exercising rights under that statute (§ 2000a-2(c)), § 245(b) by prohibiting official or private acts or attempts to "injure, intimidate, or interfere" with civil rights protest rights employs a more general prohibition against any attempted injury, intimidation, or interference. This more general prohibition includes the forcible arrests, incarceration and state prosecution in this case, by any person "whether or not acting under color of law." Literal comparison of the two provisions therefore suggests that § 245(b) is a more, not less sweeping prohibition of official acts of harassment against equal civil rights than the limited proscription of § 2000a-2(c). "Attempts to punish" are only one of many means of injuring, intimidating, or interfering. As noted by Chief Judge John R. Brown of the Fifth Circuit:

> "Compare the language of § 245(b) with 42 U.S.C.A. § 2000a-2(c), the statute utilized as a vehicle for removal in *Rachel.* Since 'injury, intimidation or interference' by 'force or threat of force' is at least the linguistic equivalent of 'punish,' § 245(b) must likewise provide an identical basis for removal, since 'on its face, this language prohibits prosecution' for the exercise or attempted exercise of equal civil rights. Hamm v. City of Rock Hill, 1964, 379 U.S. 306, 311, 85 S.Ct. 384, 389, 13 L.Ed.2d 300, 304." *Perkins* v. *Mississippi,* 455 F.2d at 39, n. 71 (dissent).

See, Comment, *Removal of State Criminal Prosecutions to Federal Court Under 42 U.S.C. § 1443,* 64 J. Crim. Law 76, 86 (1973). Cf. *Whatley* v. *City of Vidalia,* 399 F.2d 521, 525-26 (5th Cir. 1968); *North Carolina* v. *Hawkins,* 365 F.2d 559, 562 (4th Cir. 1966) (Sobeloff, J., concurring), cert. denied, 385 U.S. 949 (1966) (42 U.S.C. §§ 1971(a) and 1973i(b)).[18]

As 18 U.S.C. § 245(b) forbids "attempts to injure, intimidate or interfere with" protected activity, the statute invoked here *provides for* a Federal statutory right not

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18 In considering similar language found in § 11(b) of the Voting Rights Act of 1965, 42 U.S.C. § 1973i(b), which prohibits any "attempt to intimidate, threaten, or coerce" any person exercising protected voting rights, commentators have suggested that "no satisfactory distinction for removal purposes can be drawn between a denial predicated upon the 'intimidate' phraseology of that section and the 'attempt to punish' language of the 1964 Civil Rights Act." Note, *Federal Jurisdiction: The Civil Rights Removal Statute Revisited,* 1967 Duke L.J. 136, 185; cf. Comment, *Civil Rights Removal Under 28 U.S.C. § 1443 (1): One Hundred Years of Inutility,* 21 Am. U. L. Rev. 375, 393-94 (1972). This view has been adopted by the Fifth Circuit, *Whatley* v. *City of Vidalia,* supra; *Thompson* v. *Brown,* 434 F.2d 1092 (5th Cir. 1970); also, *Mashburn* v. *Daniel,* Civil No. 73J-138(R) (S.D. Miss. Aug. 20, 1973).

even to be prosecuted in the Mississippi courts. The provisions of the Federal equal rights statute invoked by petitioners here therefore make *Rachel* controlling, and *Peacock* distinguishable, since the absence of any such language was critical to the denial of removal in *Peacock* (483 U.S. at 827, n. 25). Because § 245(b) prohibits attempts to intimidate and interfere with protected rights, under *Rachel* "*any* proceedings in the courts of the State will constitute a denial of the rights" (384 U.S. at 804, emphasis in original) conferred by the act:

> "the mere pendency of the prosecutions enables the federal court to make the clear prediction that the defendants will be 'denied or cannot enforce in the courts of [the] state' the right to be free" (*Rachel*, 384 U.S. at 805)

of any "attempts to injure, intimidate or interfere with" any person "participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to . . . participate" in protected benefits and activities.

Compelled by *Rachel*, this holding limits the applicability of removal to the narrow class of cases of baseless arrests and prosecutions for *racial* protest demonstrations opposing the denial of *equal* enjoyment of those benefits and activities *specified* in the statute, and would not disrupt the bulk of legitimate state criminal litigation. This limited preemptive Federal protection is *necessary* and *justified* both because of the special prominance of the rights asserted and because of their extreme vulnerability in the face of mass arrests and prosecutions. This limited right of removal is *required* because Congress so provided in enacting Section 245(b) and 28 U.S.C. § 1443(1).

B. Removal is Necessary to Protect Section 245(b) Rights of Civil Rights Protest From Denial by State Criminal Process.

The Federal substantive guarantees of equal civil rights, unlike the trial procedure rights protected in the *Strauder-Rives-Powers* line of removal cases,[19] are principally aimed at prohibiting the states from repression of certain kinds of protected conduct. As the legislative history of § 245(b) makes clear, its purpose was immediately to allow and to liberate from state and private inhibition and deterrence the conduct it was designed to protect. It certainly was not meant merely to restrict the forms through which state procedure may abut at judgment. Normally, Federal trial protection rights may adequately be recognized upon reversal of tainted convictions. But the very maintenance, the mere pendency, of state criminal proceedings directed at the abridgment of substantively protected conduct has a unique repressive force that precedes and is entirely independent of the final judgment. *Rachel,* 384 U.S. at 805.[20]

Congress in enacting the Civil Rights Act of 1968 clearly was aware of the repressive force of mass arrests and detention of civil rights demonstrators upon the exercise of the substantive right to protest racial discrimination. Subparagraph (5) of § 245(b) not only protects against interference with persons protesting racial discrimination,

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19 *Strauder* v. *West Virginia*, 100 U.S. 303 (1880); *Virginia* v. *Rives*, 100 U.S. 313 (1880); *Kentucky* v. *Powers*, 201 U.S. 1 (1906). See *Rachel*, 384 U.S. at 797-804.

20 See also, A. Amsterdam, *Criminal Prosecutions Affecting Federally Guaranteed Civil Rights: Federal Removal and Habeas Corpus Jurisdiction to Abort State Court Trial*, 113 U. Pa. L. Rev. 793, 861 ff. (1965).

but also protects against interference "in order to intimidate such citizen *or any other citizen*" (emphasis added) from lawfully protesting racial abridgment of the listed benefits and activities. Thus the statute, by its express terms, prohibits interference designed to have a "chilling effect" on the free exercise by persons other than the immediate victims of the right of racial protest, thus requiring anticipatory Federal relief.

Indeed, abrogation of the right to protest racial discrimination by arrest and incarceration of the demonstrators goes beyond the denial of protest rights: by cutting off those opposing racial discrimination, the state officials make possible a perpetuation of the invidious and humiliating discrimination which was the object of the protest activity. The victims of the arrests thus are multiplied: the demonstrators, their rights of racial protest, and the equal opportunities which they seek not only for themselves, but for all others similarly situated. In passing Section 245(b) Congress intended otherwise.

If by the arrests and prosecutions, others are deterred from exercising the substantive rights granted by the statute — as here — then these rights are initially denied by the first stage of the state criminal proceeding. Meaningful correction by an appellate court is therefore virtually impossible. It defeats the purposes of the Section 245(b) and the removal statute to conceive the Federal statutory right to conduct and participate in a racial protest demonstration merely as a right to a favorable judgment at the conclusion of the state prosecution — or appeal from a conviction — for demonstrating. This does not protect petitioners and persons associated with them from the harassment and intimidation by the local law

enforcement agencies which is proscribed by the statute. It does not protect them from arrest *en masse* on frivolous or unfounded charges. It does not protect them from continued arrest and incarceration until bond can be made for their release. It does not protect them from the long delays attendant upon trial, whether individually or collectively. It does not protect them from often expensive litigation or appeals until their rights are finally vindicated. It does not protect them or "any other citizen" from being frightened away from the lawful assertion of their rights and lawful protest against the continued denial of them. Cf. *NAACP* v. *Thompson*, 357 F.2d 831, 838 (5th Cir. 1966), cert. denied, 385 U.S. 820 (1967).

These considerations were evident in *Rachel* when the Court held:

> "It is no answer in these circumstances that the defendants might eventually prevail in the state court [footnote omitted]. The burden of having to defend the prosecutions is itself the denial of a right explicitly conferred by the Civil Rights Act of 1964. * * *" (384 U.S. at 805).

But regardless of these other considerations affecting removal under § 245(b), the same result obtained in *Rachel* is required here because Congress in § 245(b) has expressly provided a right not to be arrested and prosecuted for protected activity. Under *Rachel* this right not to be prosecuted is controlling for removal. Any Federal equal civil rights statute which confers such a right not to be prosecuted thereby provides for — and is a "law providing for" — the relevant right which supports

removability. Because of its proscriptions against official harassment and intimidation, § 245(b) must be held to be such a law, unless *Rachel* is to be overruled.

This protection of the right not even to be prosecuted in state court, enforced by the Court in *Rachel* and compelled here, scrupulously avoids turning removal upon any notion that disparages the state judiciary or implies that they will not act to protect preemptive Federal rights. Petitioners here are *not* contending that removal is required simply because the charges against them are false, or that they are unable to obtain a fair trial in state court (cf. *Peacock*, 384 U.S. at 827). Neither does the interpretation urged by petitioners require or permit "the judges of the federal courts to put their brethern of the state judiciary on trial" (*Peacock*, 384 U.S. at 828), since it is clear that by operation of § 245(b) petitioners' Federal rights "will inevitably be denied by the very act of bringing [them] to trial in the state court" (id.). Indeed, because removal occurs prior to the state court judgment, this removal procedure puts *less* strain on relations with the state judiciary than post-judgment review, such as by appeal to this Court or by Federal habeas corpus, which does require Federal judges to sit in judgment of their state brethern in reversing or modifying a state court judgment.

Since the whole theory of removal under *Rachel* and *Peacock* depends upon whether an individual has a right "not even to be brought to trial on . . . charges," the test of "providing for" is whether the Federal civil rights law invoked *provides for* a right not to be prosecuted. If it does, then *any* proceedings in the courts of the state will constitute a denial of the right conferred, and the mere

pendency of the prosecutions enables the Federal court to predict under § 1443(1) that the defendants will be "denied or cannot enforce" their right in state court. This is precisely what § 245(b) does provide.

IV. The Judgment Below Should Be Reversed And The Case Remanded To The Court Of Appeals.

As set forth in Arguments II and III, removal of state criminal prosecutions based on Section 245(b) is appropriate, contrary to the conclusion of the court below. Therefore, upon a petition alleging factual circumstances covered by Section 245(b), an evidentiary hearing is required in Federal District Court to determine, as a matter of fact, whether the conduct which is the subject of the state criminal prosecution is protected under Section 245(b). *Rachel*, 384 U.S. at 805-06. If so, the state criminal prosecution must be dismissed; if not, the case must be remanded to the state court for trial. Id. As stated by Judge Tuttle for the Fifth Circuit in another case, this factual determination turns on

> "what the movant was *actually* doing with respect to the exercise of his statutory federally protected right, as determined in a hearing for remand, . . . and not the characterization given to the conduct in question by a state prosecutor." *Walker* v. *Georgia*, 417 F.2d 1, 5 (5th Cir. 1969) (emphasis in original).

As set forth in the Statement of the Case, Facts, *supra*, what petitioners were *actually* doing here was exercising

their Section 245(b) rights by attempting to participate (§ 245(b)(4)), encouraging others to participate (§ 245(b)(5)), and through lawful speech and peaceful assembly opposing discriminatory denials of the opportunity to participate (id.) in the specified benefits and activities of the statute free of racial discrimination. The goals of petitioners' protest activities fit precisely within the protections of Section 245(b):

> "To find ways to get more jobs for black people [§ 245(b)(2)(C)], to try to get black people on Civil Service [id.], jobs on the board of education [id.], to see what could be done for needy families that should be on Welfare or Social Security [§ 245(b)(1)(B) and (E), and (2)(B)], housing [id.], the whole public service that should be rendered by the city [§ 245(b)(2)(B)].
>
> * * *
>
> We were just coordinating the activities that the people of Concerned Citizens of Vicksburg were concerned about. As I said, they wanted to know about welfare, they wanted to know about Social Security. They thought that a lot of people who were eligible weren't receiving it. They wanted to know about housing, and they felt that a lot of people needed that. So our main involvement was to find ways of channels or avenues that more people could get these jobs, they could get better housing, to try and get more people on welfare, those who were eligible." App. 49-50 (Ferguson testimony).

"The things that the black people of Vicksburg are asking for are in conjunction, basically in conjunction with both the city officials and the merchants; the activities of the merchants in not allowing more black people to work other than janitorial positions are uncalled for because there are sales people and managerial type people in Vicksburg who are qualified and able to do a good job [§ 245(b)(2)(C)]. Basically, I think it's good business for businessmen to hire black people. In conjunction with the city, there are very few, two or three [Blacks] at the most, employed with the city; and yet black people in Vicksburg compiles more than 46 percent of the population, and there are no black people other than janitors working in City Hall. I understand recently they might have had a clerk that has recently been hired, but there are no black people in the Civil Service force, there aren't any black people on the housing authority boards, at least there aren't any in decision making jobs [§ 245(b)(2)(C)]." App. 67 (Ferguson testimony).

In the face of the overwhelming evidence that petitioners' activities and goals came directly within the protections of § 245(b), and that their protest activities were peaceful, the District Court held that petitioners' activities were not protected (Petition, App. D, p. 19a). Insofar as this holding is based on findings of fact adverse to petitioners,[21] we submit that they are plainly in error.

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21 Some of the findings of the District Court, however, clearly are tainted by its erroneous view of the law. First, the District Court goes beyond merely accepting the state prosecutor's characterization of petitioners' conduct (App. 30) by suggesting, *sua sponte*, that the petitioners' conduct fell under state criminal statutes different than the one charged by the state prosecutor (Pet., App. D, pp. 17a-18a, 20a).

On appeal to the Fifth Circuit, petitioners contended that the District Court's adverse findings of fact were "clearly erroneous." Rule 52(a), F.R. Civ. P. Although the Court of Appeals in its opinion may have concluded that petitioners' conduct was wholly within the protections of Section 245(b) — "At the outset, we note that there is no question of appellants' right to engage in peaceful picketing" (488 F.2d at 286) — the court below did not review the factual issue. The appeals court instead limited its decision to the legal conclusion that Section 245(b) as a criminal statute could *never* support removal. 488 F.2d at 287. In such circumstances, given that fundamental rights are at stake, this Court may "make an independent examination of the whole record" to determine whether petitioners' activities were within Section 245(b), *Edwards* v. *South Carolina*, 372 U.S. 229, 235 (1963); *Cox* v. *Louisiana*, 379 U.S. 536, 545 (1965); or it may remand this case to the Court of Appeals to review the factual issue free of legal error, cf. *United States* v. *Brims*, 272 U.S. 549, 553 (1926); *Cole* v. *Ralph*, 252 U.S. 286, 289-90 (1920).[22] Petitioners are confident that such review by this Court, or by the Court of Appeals, will show that petitioners' conduct is protected activity under Section 245(b), and therefore that the remand order of the District Court should be vacated and the state court charges dismissed.

Footnote 21 (Con't)

Second, the more narrowly the District Court erroneously construed the rights protected under § 245(b), the greater the permissible area of potential criminal conduct. Thus, it is understandable, but not legally justifiable, how the District Court could proceed on the *theory* that protected civil rights protest demonstrations against official discrimination and boycott activity designed to gain equal employment opportunities could somehow constitute a "restraint of trade."

22 This independent review of the facts is particularly appropriate here where the Court of Appeals has *not* reviewed the facts. Therefore, the usual "two court" rule — *Keyes* v. *School District No. 1*, 413 U.S. 189, 198, n. 9 (1973) — is *not* binding on this Court.

CONCLUSION

For the foregoing reasons, and on the basis of the authorities cited, the Judgment of the Court of Appeals should be reversed and the case remanded to the Fifth Circuit either for review of the factual contentions of the parties or to vacate the remand order and dismiss the state criminal charges.

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In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1531

ALBERT JOHNSON, ET AL.,
Petitioners,

vs.

STATE OF MISSISSIPPI, ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF RESPONDENTS

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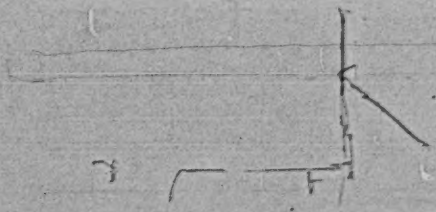

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S.Rep., No. 721, 90th Cong., 1st Sess., pp. 1838, 1839 10-11

In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1531

ALBERT JOHNSON, ET AL.,
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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF RESPONDENTS

OPINIONS BELOW

The opinion of the Court of Appeals for the Fifth Circuit is reported at 488 F.2d 284 and is reproduced in the Petition, Appendix B (pp. 6a-13a). The order of the Court of Appeals denying the Petition for Rehearing and Rehearing En Banc is reported at 491 F.2d 94 and is reproduced in the Petition, Appendix A (pp. 1a-5a). The opinion of the District Court is unreported but appears in the Petition, Appendix D (pp. 15a-25a).

JURISDICTION

The United States Court of Appeals for the Fifth Circuit entered its judgment on January 14, 1974, and denied rehearing or in the alternative rehearing en banc on March 15, 1974. A Petition for Writ of Certiorari was filed April 12, 1974, and was granted on October 21, 1974. This Court's jurisdiction is invoked pursuant to 28 U.S.C. §1254(1) and 28 U.S.C. §1447(d).

QUESTION PRESENTED

Whether 18 U.S.C. §245 is a law *providing* for equal civil rights as envisioned by 28 U.S.C. §1443(1) and the teachings of this Court in *Georgia* v. *Rachel*, 384 U.S. 780 (1966) and *City of Greenwood* v. *Peacock*, 384 U.S. 808 (1966) to serve as a foundation for criminal removal.

STATUTES INVOLVED

1. 28 U.S.C. §1443(1) [1964 ed.] (See Appendix A-1).

2. 18 U.S.C. §245 [82 Stat. 73] (See Appendix A-2).

3. §97-23-83, Mississippi Code of 1972 (See Appendix A-3).

4. §97-23-85, Mississippi Code of 1972 (See Appendix A-4).

STATEMENT OF THE CASE

On or about March 25, 1972, a black boycott of local businesses began in Vicksburg, Mississippi, and continued for approximately five weeks. The stated purpose of this campaign was to attain equal employment opportunities

in the privately owned establishments and in the municipal government and its agencies.

The petitioners allege that they were "engaged in picketing and distribution of leaflets" and that these activities are constitutionally protected modes of expression. While it is not disputed that these petitioners may or may not have been engaged in these normally protected activities at one time or another, respondent states that these are not the incidents for which the individuals were charged.

Factual presentation indicates that there had been two separate instances surrounding the arrests of the complaining individuals. The first was marching and/or picketing in the City of Vicksburg. There were no accompanying incidents to necessitate state action. However, the second is of an entirely different posture. The arrests of the petitioners arose from acts of intimidation toward shoppers and/or merchants who were attempting to perform related business activities. The arrests in question occurred on these separate occasions—May 2, May 13 and May 15, 1972. Nearly all arrests were founded upon a breach of the Mississippi Secondary Boycott statute, §97-23-85, Mississippi Code of 1972. However, on May 13, 1972, Albert Johnson was additionally charged upon sworn affidavit pursuant to §97-23-83, Mississippi Code of 1972, of having specifically interfered with and intimidated one James E. Sturgis, a black principal of a high school, for trading with a white merchant.

In an attempt to utilize the removal statute, 28 U.S.C. §1443(1), the petitioners assert the Civil Rights Act of 1968, 18 U.S.C. §245.

Predicated upon the pronouncements of this Court in *Georgia* v. *Rachel*, 384 U.S. 780 (1966) and *Greenwood*

v. *Peacock*, 384 U.S. 808 (1966), the courts below denied the petitioners' request for removal. The district court issued its order of remand January 4, 1973; the Circuit Court of Appeals affirmed, 5 Cir., 1974, 488 F.2d 284, reh. and reh. en banc denied 491 F.2d 94. In doing so, the appellate court rejected the petitioners' argument that 18 U.S.C. §245 is sufficient basis to invoke the federal removal statute.

SUMMARY OF ARGUMENT

This Court is being requested by the petitioners herein to reexamine and perhaps rewrite its landmark decisions on criminal removal, *Georgia* v. *Rachel*, 384 U.S. 780 (1966) and *City of Greenwood* v. *Peacock*, 384 U.S. 808 (1966).

Removal is purely a question of jurisdiction which is authorized by the provisions of 28 U.S.C. §1443(1). To trigger this extraordinary remedy, the petitioners must prove the existence of a specific statutory right providing for equal civil rights stated in terms of racial equality, which one is denied or cannot enforce in the courts of a state. Moreover, the denial must be evidenced primarily, if not exclusively, by a state statute in conflict with a federal statute.

To effect compliance with this exacting criteria, the petitioners place their reliance on 18 U.S.C. §245. Such a foundation will not support their contentions. The statute makes this clear by its express terms. It neither provides nor creates any substantive rights as required by §1443(1); it is solely a criminal statute permitting federal prosecution for forceful interference with a long list of activities.

ARGUMENT

In its original panel decision, the Circuit Court of Appeals succinctly stated the issue now before this Court:

> "The key to removal under §1443(1) is whether there exists a law 'providing for . . . the equal civil rights of citizens.' Unlike all previous cases which have interpreted the phrase and which have focused on whether a particular statute meets the 'equal civil rights' test, the essential inquiry here is whether §245, which clearly deals with equal civil rights, meets the requirement that the law be one providing such rights." 488 F.2d 284, 286.

I.

This Case Must Be Placed Within the Strictures of Peacock Denying Removal Because No Federal Law Permits the Petitioners to Engage in the Activity for Which They Were Charged and No Federal Statute Confers Immunity from State Prosecution from Such Charges.

The teachings of *Georgia* v. *Rachel*, 384 U.S. 780 (1966) and *City of Greenwood* v. *Peacock*, 384 U.S. 808 (1966) foreclose the petitioners from utilizing the remedy of removal in this case because *Albert Johnson* simply does not meet the demands of 28 U.S.C. §1443(1) or the criteria established by these decisions.

After a comprehensive analysis of the history of the civil rights removal statute and its previous decisions construing it, this Court concluded in *Georgia* v. *Rachel*, supra, that decisions up to that time established that in order to come within what is now §1443(1), petitioners must com-

ply with both requirements of that subsection to achieve removal of their criminal prosecutions.

> "They must show both that the right upon which they rely is a 'right under any law providing for . . . equal civil rights' and that they are 'denied or cannot enforce' that right in the courts of Georgia." *Rachel,* 384 U.S. 780, 788.

These limitations were met in *Rachel* by the Court's recognition of two intervening factors: (1) the passage of Congress of the Civil Rights Act of 1964, Section 201, 78 Stat. 243, 42 U.S.C. 2000(a); and (2) their interpretation of that statute in *Hamm* v. *City of Rock Hill,* 379 U.S. 306 (1964). While acknowledging that Public Accommodations legislation was enacted subsequent to the attempted removal, the Court reasoned that the Act entitled all persons to be served in restaurants open to the public. The defendants who had been in such a restaurant were being prosecuted under a Georgia statute making it a misdemeanor to not leave the premises when ordered to do so by the "owner or person in charge." Section 203(c) of the Civil Rights Act prohibits any "attempt to punish" persons for exercising the rights of equality so conferred. This had been interpreted in *Hamm* to prohibit not merely conviction but prosecution. Hence, if defendants could substantiate the allegations in the removal petition that they had been asked to leave for racial reasons, prosecution in the state courts would itself "deny" a right conferred by Title II of the 1964 Civil Rights Act.

Thus, the Court concluded that Congress had accorded a statutory substantive right superseding a crime. With this, removal may be reached provided, however, that it could ultimately be proven that the petitioners had been denied the right of utilizing public accommodations *solely* upon the basis of race.

City of Greenwood v. *Peacock*, 384 U.S. 808 (1966), is another matter.

Illustrating that removal is essentially statutory the Court reached a different conclusion in *Peacock*. There the defendants were charged with obstructing public streets, and various other offenses. The then petitioners alleged their arrests were racially motivated, stemming from their participation in voter registration drives in Mississippi. Despite the enactment of the Voting Rights Act of 1965, 42 U.S.C. §1973, the Court held that this case was to be governed by the previous line of decisions against removal culminating in *Kentucky* v. *Powers*, 201 U.S. 1 (1906), rather than *Rachel*.

In the language of the decision:

> "The present case differs from *Rachel* in two significant respects. First, no federal law confers an absolute right on private citizens—on civil rights advocates, on Negroes, or on anybody else—to obstruct a public street, to contribute to the delinquency of a minor, to drive an automobile without a license or to bite a policeman. Second, no federal law confers immunity from state prosecutions on such charges." *Peacock*, 384 U.S. 808, 826, 827.

In sum, the doctrine announced by the Court was also a limitation on removal.

> "It is *not* enough to support removal under Section 1443(1) to allege or show that the defendant's federal equal civil rights have been illegally and corruptly denied by state administrative officials in advance of trial, that the charges against the defendant are false, or that the defendant is unable to obtain a fair trial in a particular state court. The motives of the officers bringing the charges may be corrupt, but that does

not show that the state trial court will find the defendant guilty if he is innocent, or that in any other manner the defendant will be 'denied or cannot enforce in the courts' of the State any right under a federal law providing for equal civil rights. The civil rights removal statute does not require and does not permit the judges of the federal courts to put their brethren of the state judiciary on trial. Under Section 1443(1), the vindication of the defendant's federal rights is left to the state courts except in the rare situations where it can be clearly predicted by reason of the operation of a pervasive and explicit state or federal law that those rights will inevitably be denied by the very act of bringing the defendant to trial in the state court. Georgia v. Rachel, 384 U.S. 780, 16 L.Ed.2d 925, 86 S.Ct. 1783; Strauder v. West Virginia, 100 U.S. 303, 25 L.Ed. 664." (Emphasis in original) *Peacock*, 384 U.S. 808, 827, 828.

Johnson falls within the strictures of *Peacock*. Quite simply, the remedial statute invoked by these petitioners sub judice to effect removal is inappropriate and inapplicable. By its very title, language and subject matter, 18 U.S.C. §245 is a criminal statute upon which the office of the United States Attorney General is permitted to bring federal charges. In short, the statute creates no rights; it merely provides protection for those in force.

II.

18 U.S.C. §245 Is a Criminal Statute That Does Not Provide for Equal Civil Rights.

Neither Congressional history nor the language of 18 U.S.C. §245 support the petitioners' argument that it is a law providing for equal civil rights in terms of racial equality as required by *Rachel* and *Peacock*. Quite the

contrary, references to this Act substantiate respondents' contention that it is exclusively a criminally prohibitive Act allowing the initiation of federal charges in certain instances.

In his inaugural statement initiating the debate on the original bill, H.R. 2516 entitled, "Penalties for Interference with Civil Rights," Honorable Emanuel Celler, Chairman of the House Judiciary Committee, spoke of the legislative intent as follows:

> Mr. CELLER. Mr. Chairman, today we debate H.R. 2516, as amended, a bill that would establish Federal criminal penalties for forcible interference with civil rights. It contains substantially the same provisions as title V of the Civil Rights Act of 1966 which was approved by the House of Representatives on August 9, 1966. H.R. 2516 is intended to achieve four main objectives:
>
> "First, it would make it a Federal crime for private individuals forcibly to interfere with lawful participation in activities protected by Federal laws, including the 14th amendment, whether or not 'State action' is involved. It would also protect these activities against interference by public officials.
>
> "Second, it would specify the kinds of activities which are protected, thus giving unmistakable warning to lawless persons that if they interfere with any of these activities, they must answer to the Federal Government.
>
> "Third, it would protect civil rights workers, Negroes, and peaceful demonstrators seeking equality.
>
> "Fourth, it would provide a graduated scale of penalties depending upon whether bodily injury or death results from the interference.
>
> * * *

"Section 245(a) and (b) covers reprisals and prohibits attempts to deter others from engaging in the protected activities. For example, the jury would have to find that defendant's purpose was to deter persons from voting or applying for employment or applying for admission to a public school or to punish persons who have done so.

"The statute would prohibit forcible interference by either public officials or private individuals. The bill would prescribe penalties graduated in accordance with the seriousness of the injury inflicted, ranging from misdemeanor penalties to life imprisonment. If a violation of the statute does not result in bodily injury or death, the penalty would be limited to a fine of not more than $1,000 or imprisonment for not more than 1 year, or both. If bodily injury does result, the penalty would be a fine of not more than $10,000 or imprisonment for not more than 10 years, or both. If death results, the penalty would be imprisonment for any term of years or for life.

* * *

"Like all criminal statutes, the purpose of H.R. 2516 is not only to punish, but to deter. I believe this legislation represents an assumption of Federal responsibility in an area which is long overdue. I urge its adoption." (Emphasis added) Cong.Rec., Vol. 113, Part 17, 90th Cong., 1st Sess., pp. 22678-22680.

Subsequently, the Report of the Senate Committee on the Judiciary defined the purpose of this legislation thusly:

"H.R. 2516, as reported, adds a new section 245 to title 18, United States Code, in the form of a criminal statute designed to deter and punish interference by

force or threat of force with activities protected by Federal law or the Constitution and specifically set out in the bill. The purpose of the legislation is to strengthen the capability of the Federal Government to meet the problem of violent interference, for racial or other discriminatory reasons, with a person's free exercise of civil rights. The areas of protected activity are specifically described. They include voting and activities related to voting; enrolling in or attending public schools or public colleges; participating in or enjoying the benefits of services, programs, facilities, or activities of Federal, State or local governments; enjoying employment, union membership, or the services of employment agencies; serving on juries; using vehicles, terminals, or facilities of common carriers; participating in programs or activities receiving Federal assistance, and enjoying the facilities of hotels, restaurants and other public accommodations.

"The statute would punish interference or attempts to interfere, by force or threat of force, with any person because of his race, color, religion or national origin and because such person is or has been engaging or seeking to engage, while acting lawfully, in any of the enumerated activities." S.Rep.No. 721, 90th Cong., 1st Sess., pp. 1838, 1839.

The argument of Albert Johnson, et al., for removal is founded on the Civil Rights Act of 1968, 82 Stat. 73, which was added to Title 18 of the United States Code §245, entitled "Federally Protected Activities." Unlike the statutes on public accommodations and voting rights, the 1968 Act does not in terms confer substantive rights; it is solely a criminal statute permitting federal prosecution for interference with a long list of activities. The circuits are universal in their concurrence with this conclusion.

There is no conflict among them whatever. *Perkins* v. *Mississippi*, 5 Cir. 1972, 455 F.2d 7, aff. en banc, 470 F.2d 1371; *Williams* v. *Tri-County Community Center*, 5 Cir. 1971, 452 F.2d 221, fn. 3; *Hill* v. *Commonwealth of Pennsylvania*, 3 Cir. 1971, 439 F.2d 1016, cert. den. 404 U.S. 985; *People of State of New York* v. *Horelick*, 2 Cir. 1970, 424 F.2d 697, cert. den. 398 U.S. 939.

The opinions arising from district courts are also uniform in this application. *Dodge* v. *Nakai*, D. of Arizona, 1968, 298 F.Supp. 17; *Lovelace* v. *Leechburg Area School District*, W.D. Penn., 1970, 310 F.Supp. 579; *Commonwealth of Pennsylvania* v. *Bradshaw*, W.D. Penn., 1973, 361 F.Supp. 405; *State of Tennessee ex rel. Fisher* v. *C. C. Manifest of Tennessee, Inc.*, E.D. Tenn., 1973, 362 F.Supp. 759; *Jaso* v. *Traczyk*, N.D. Ind., 1973, 367 F.Supp. 434; *Means* v. *Wilson*, D.C. S.D., 1974, 383 F.Supp. 378.

As previously indicated by the Congressional history of this statute, it merely protects one from interference with their participating in federally protected activities; it is criminal in nature and has been held not to create a civil cause of action. The justification for such a holding is strong in view of the restraints placed by Congress on the invocation of 18 U.S.C. §245, which may be invoked by the United States only upon certification in writing by the Attorney General or Deputy Attorney General that a prosecution is justified in the public interest. 18 U.S.C. §245(a)(1). To this end, the statute has been utilized by the Department of Justice on several occasions. In Missouri, an individual was convicted of an assault on a black because of interference with his enjoyment of a government recreation area. *United States* v. *Price*, 8 Cir. 1972, 264 F.2d 1217. The defendant was charged with interference of one's civil right to be a witness in *United States* v. *Pacelli*, 2 Cir. 1974, 491 F.2d 1108; *United*

States v. *Dioguardi*, 2 Cir. 1974, 492 F.2d 70. The defendant was found guilty of violating the civil rights statute in connection with a beating suffered by a black janitor during his arrest in a tavern in *United States* v. *Herrod*, 5 Cir. 1974, 499 F.2d 1003.

Subdivision (b) says that "Whoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with" five broad categories of persons, several divided into subcategories, shall be subject to fine or imprisonment as there described. At least two of the categories, (1) and (3), taken by themselves would not seem to fit the definition of "equal civil rights" in *Rachel*, to-wit, "any law *providing* for specific civil rights states in terms of racial equality." 384 U.S. 780, 792.

III.

Unless the Words of §1443(1) Are to Be Disregarded and the Previous Consistent Decisions of This Court Completely Repudiated, the Answer Must Clearly Be That No Removal Is Authorized in This Case.

Section 245(b), which the petitioners rely upon in the instant case, explicitly indicates that Congress did not intend to displace the state laws upon which the petitioners were charged. The Senate report, in describing the purpose of the Act, disclaimed any intention to occupy the field or preempt state criminal laws and specifically stated that for one to be under the United States' protection one was required to be acting lawfully. In addition, it is clear that §245 is aimed only at intimidation by "force or threat of force" in the sense of violent activity. It was not intended to displace the ordered functioning of

state legal process, no matter the motivation of those instituting the prosecution. *People of the State of New York* v. *Horelick*, 2 Cir. 1970, 424 F.2d 697, 702-703. Any other view would work the wholesale dislocation of the relationship between federal and state courts in the administration of criminal law, which was warned against in *Peacock*, 384 U.S. 808, 832-835.

IV.

If Any Acts Are Reprehensible in This Cause, It is Those of the Petitioners Since They Were Arrested Because of Illegal Conduct Rather Than in the Exercise of Any Protected First Amendment Right.

The petitioners in this appeal were not arrested as a result of their exercise of any First Amendment right of expression, i.e., picketing and marching. The legal proceedings in question were initiated only *after* it was discovered that certain individuals were in fact engaged in ancillary, unprotected activity to perpetuate an illegal boycott. In other words, the respondent believes that the reason for probable cause and the subsequent arrests of these individuals was unprotected conduct outside the ambit of the First Amendment shield. *United States* v. *O'Brien*, 391 U.S. 367, 376 (1968). The right of peaceful protest does not mean that everyone with opinions or beliefs may express them in any manner, at any time and at any place. *Cox* v. *Louisiana*, 379 U.S. 559 (1965). In effect, such a posture places the actions of the petitioners squarely within the admonition of the Supreme Court in *Peacock*, 384 U.S. 808, 826, 827.

Therefore, when stripped of all else, the petitioners are left with nothing more than First Amendment allegations to support their request for removal. This is insuffi-

cient; injunction is more appropriate, *Peacock*, 384 U.S. 808, 825, 829, and the timetable more immediate, *Mitchum* v. *Foster*, 407 U.S. 225 (1972).

CONCLUSION

Upon the facts presented in this case, it may clearly be seen that the exacting criteria for removal has not been met. 18 U.S.C. §245 is, by its very language, criminal in nature; it "provides" no specific civil right stated in terms of racial equality. Removal is not the proper remedy here; a more appropriate avenue would have been to seek injunctive relief.

For the foregoing reasons, the opinion of the Court of Appeals should be affirmed.

Respectfully submitted,

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CERTIFICATE

I, Ed Davis Noble, Jr., Special Assistant Attorney General, do hereby certify that I have mailed this date by United States Mail a true copy of the foregoing Brief of Respondents to:

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THIS the 10th day of January, 1975.

ED DAVIS NOBLE, JR.

APPENDIX A-1

1443. Civil rights cases.—Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:

(1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;

APPENDIX A-2

245. Federally protected activities.—(a)(1) Nothing in this section shall be construed as indicating an intent on the part of Congress to prevent any State, any possession or Commonwealth of the United States, or the District of Columbia, from exercising jurisdiction over any offense over which it would have jurisdiction in the absence of this section, nor shall anything in this section be construed as depriving State and local law enforcement authorities of responsibility for prosecuting acts that may be violations of this section and that are violations of State and local law. No prosecution of any offense described in this section shall be undertaken by the United States except upon the certification in writing of the Attorney General or the Deputy Attorney General that in his judgment a prosecution by the United States is in the public interest and necessary to secure substantial justice, which function of certification may not be delegated.

(2) Nothing in this subsection shall be construed to limit the authority of Federal officers, or a Federal grand jury, to investigate possible violations of this section.

(b) Whoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with—

(1) Any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from—

(A) voting or qualifying to vote, qualifying or campaigning as a candidate for elective office, or qualifying or acting as a poll watcher, or any legally authorized election official, in any primary, special, or general election;

(B) participating in or enjoying any benefit, service, privilege, program, facility, or activity provided or administered by the United States;

(C) applying for or enjoying employment, or any perquisite thereof, by any agency of the United States;

(D) serving, or attending upon any court in connection with possible service, as a grand or petit juror in any court of the United States;

(E) participating in or enjoying the benefits of any program or activity receiving Federal financial assistance; or

(2) any person because of his race, color, religion or national origin and because he is or has been—

(A) enrolling in or attending any public school or public college;

(B) participating in or enjoying any benefit, service, privilege, program, facility or activity provided or administered by any State or subdivision thereof;

(C) applying for or enjoying employment, or any perquisite thereof, by any private employer or any agency of any State or subdivision thereof, or joining or using the services or advantages of any labor organization, hiring hall, or employment agency;

(D) serving, or attending upon any court of any State in connection with possible service, as a grand or petit juror;

(E) traveling in or using any facility of interstate commerce, or using any vehicle, terminal, or facility of any common carrier by motor, rail, water, or air;

(F) enjoying the goods, services, facilities, privileges, advantages, or accommodations of any inn, hotel, motel, or other establishment which provides lodging to transient guests, or of any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility which serves the public and which is principally engaged in selling food or beverages for consumption on the premises, or of any gasoline station, or of any motion picture house, theater, concert hall, sports arena, stadium, or any other place of exhibition or entertainment which serves the public, or of any other establishment which serves the public and (i) which is located within the premises of any of the aforesaid establishments or within the premises of which is physically located any of the aforesaid establishments, and (ii) which holds itself out as serving patrons of such establishments; or

(3) during or incident to a riot or civil disorder, any person engaged in a business in commerce or affecting

commerce, including, but not limited to, any person engaged in a business which sells or offers for sale to interstate travelers a substantial portion of the articles, commodities, or services which it sells or where a substantial portion of the articles or commodities which it sells or offers for sale have moved in commerce; or

(4) any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from—

(A) participating, without discrimination on account of race, color, religion or national origin, in any of the benefits or activities described in subparagraphs (1)(A) through (1)(E) or subparagraphs (2)(A) through (2)(F); or

(B) affording another person or class of persons opportunity or protection to so participate; or

(5) any citizen because he is or has been, or in order to intimidate such citizien or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination on account of race, color, religion or national origin, in any of the benefits or activities described in subparagraphs (1)(A) through (1)(E) or subparagraphs (2)(A) through (2)(F), or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate—

shall be fined not more than $1,000, or imprisoned not more than one year, or both; and if bodily injury results shall be fined not more than $10,000, or imprisoned not more than ten years, or both; and if death results shall be subject to imprisonment for any term of years or for life. As used in this section, the term "participating lawfully in speech or peaceful assembly" shall not mean the

aiding, abetting, or inciting of other persons to riot or to commit any act of physical violence upon any individual or against any real or personal property in furtherance of a riot. Nothing in subparagraph (2)(F) or (4)(A) of this subsection shall apply to the proprietor of any establishment which provides lodging to transient guests, or to any employee acting on behalf of such proprietor, with respect to the enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of such establishment if such establishment is located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor as his residence.

(c) Nothing in this section shall be construed so as to deter any law enforcement officer from lawfully carrying out the duties of his office; and no law enforcement officer shall be considered to be in violation of this section for lawfully carrying out the duties of his office or lawfully enforcing ordinances and laws of the United States, the District of Columbia, any of the several States, or any political subdivision of a State. For purposes of the preceding sentence, the term "law enforcement officer" means any officer of the United States, the District of Columbia, a State, or political subdivision of a State, who is empowered by law to conduct investigations of, or make arrests because of, offenses against the United States, the District of Columbia, a State, or a political subdivision of a State. (Apr. 11, 1968, P. L. 90-284, Title I, § 101(a), 82 Stat. 73.)

APPENDIX A-3

§ 97-23-83. Threats or coercion to prevent lawful conduct of business.

If any person shall in any manner threaten with bodily harm, intimidate or coerce another person to prevent said person from lawfully trading or carrying on business, including buying or selling, he shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment for not more than one (1) year in the county jail or be fined not more than one thousand dollars ($1,000.00) or both.

APPENDIX A-4

§ 97-23-85. Unlawful restraint of trade—boycott—civil liability.

If two (2) or more persons conspire to prevent another person or other persons from trading or doing business with any merchant or other business and as a result of said conspiracy said persons induce or encourage any individual or individuals to cease doing business with any merchant or other person, and when such conspiracy is formed and effectuated because of a reasonable grievance of the conspirators over which the said merchant or place of business boycotted or against which a boycott is attempted has no direct control or no legal authority to correct, or when the conspiracy results from such alleged grievance against the merchant or other person boycotted when no notice of such grievance has been given the

merchant or party boycotted and no reasonable opportunity to correct such alleged grievance has been given such merchant or other person against whom the conspiracy was formed, then each of such persons shall be guilty of the crime of unlawful restraint of trade and shall be fined not more than one thousand dollars ($1,000.00) or imprisoned for not more than two (2) years and in addition each such person shall be liable in civil action for any damages suffered by said merchant or place of business so wrongfully boycotted and also for attorney fees incurred by said merchant or person boycotted in a civil action to recover damages.

(Slip Opinion)

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

JOHNSON ET AL. *v.* MISSISSIPPI ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 73-1531. Argued February 26, 1975—Decided May 12, 1975

Petitioners, six Negroes, who had been picketing and urging boycott of certain business establishments in Vicksburg, Miss., because of their alleged racial discrimination in employment, were arrested with others and charged with unlawfully conspiring to bring about a boycott. Those arrested then sought removal of the prosecutions from state to federal court pursuant to 28 U.S.C. § 1443 (1), which provides for removal of state proceedings "[a]gainst any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens," alleging that the conspiracy statutes underlying the charges were unconstitutional, that the charges were groundless and made solely to deprive those arrested of their federally protected rights, and more particularly that their activities were protected by 18 U. S. C. § 245 (Title I of the Civil Rights Act of 1968). Section 245 (b)(5), *inter alia*, makes it a crime by "force or threat of force" to injure, intimidate, or interfere with any person because he has been "participating lawfully in speech or peaceful assembly" opposing racial discrimination in employment, but § 245 (a)(1) provides that § 245 shall not be construed as indicating Congress' intent to prevent any State from exercising jurisdiction over any offense over which it would have jurisdiction in the absence of § 245. The District Court denied removal, and the Court of Appeals affirmed, holding that § 245 "confers no rights whatsoever" and that a federal statute must "provide" for the equal rights of citizens before it can be invoked as a basis for removal of prosecutions under § 1443 (1). *Held:* Removal under § 1443 (1) was not warranted based solely on petitioners' allegations that the statutes underlying the charges were unconstitutional, that there was no basis in fact for those charges, or

Syllabus

that their arrest and prosecution otherwise denied them their constitutional rights. *Georgia* v. *Rachel*, 384 U. S. 780; *City of Greenwood* v. *Peacock*, 384 U. S. 808. Nor does § 245 furnish adequate basis for removal under § 1443 (1). Pp. 9–13.

(a) The Mississippi courts undoubtedly have jurisdiction over conspiracy and boycott cases brought under state law, and § 245 (a)(1) appears to disavow any intent to interrupt such state prosecutions, a conclusion that is also implicit in § 245's operative provisions, since § 245 (b) on its face focuses on the use of force, and its legislative history confirms that its central purpose was to prevent and punish *violent* interferences with the exercise of specified rights and that it was not aimed at interrupting or frustrating the otherwise orderly processes of state law. Pp. 10–12.

(b) Viewed in the context of § 245's being directed at crimes of racial violence, a state prosecution, proceeding as it does in a court of law, cannot be characterized as an application of "force or the threat of force" within the meaning of § 245, and whatever "rights" that section may confer, none of them is denied by a state criminal prosecution for conspiracy or boycott, there being no "federal statutory right that no State should even attempt to prosecute [petitioners] for their conduct," *Peacock*, *supra*, at 826–827. Pp. 12–13.

(c) The absence of any evidence or legislative history indicating that Congress intended to accomplish in 18 U. S. C. § 245 what it has failed or refused to do directly through amendment to 28 U. S. C. § 1443 also necessitates rejection of the right of removal in this case, in addition to which there are other avenues of relief open to petitioners for vindication of their federal rights that may have been or will be violated. Pp. 14–15.

488 F. 2d 284, affirmed.

WHITE, J., delivered the opinion of the Court, in which BURGER, C. J., and STEWART, BLACKMUN, POWELL, and REHNQUIST, JJ., joined. MARSHALL, J., filed a dissenting opinion, in which BRENNAN, J., joined. DOUGLAS, J., took no part in the consideration or decision of the case.

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 73–1531

Albert Johnson et al., Petitioners, *v.* State of Mississippi et al. | On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[May 12, 1975]

MR. JUSTICE WHITE delivered the opinion of the Court.

This case concerns the application of 28 U. S. C. § 1443 (1), permitting defendants in state cases to remove the proceedings to the federal district courts under certain conditions, in the light of Title I of the Civil Rights Act of 1968, § 101 (a), 82 Stat. 73, 18 U. S. C. § 245.

I

During March 1972, petitioners, six Negro citizens of Vicksburg, Mississippi, along with other citizens of Vicksburg, made various demands upon certain merchants and city officials generally relating to the number of Negroes employed or serving in various positions in both local government and business enterprises. In late March, petitioners began picketing some business establishments in Vicksburg and urging, by word of mouth and through leaflets, that the citizens of Vicksburg boycott those establishments until such time as petitioners' demands were realized.[1] On May 2, May 13, May 14, and May 21 of that year, petitioners, along with 43 other Negroes, were

[1] With respect to these business establishments, the specific demands made by the petitioners were that 40% of their employees and managers should be drawn from the Negro community.

arrested [2] on the basis of warrants charging, in general terms, their complicity in a conspiracy unlawfully to bring about a boycott of merchants and businesses.[3] At least some of these arrests took place at a time when some of those arrested were engaged in picketing in protest of the racial discrimination allegedly practiced by certain merchants of Vicksburg. Following the arrests, which were made by Vicksburg police officers, those arrested were transported to the city jail where they each remained after processing until the posting of bail. There is no indication in the record in this case that the arrests and subsequent detentions of petitioners or the other 43 persons so arrested and detained involved the application of any force by the arresting officers beyond the verbal directions issued by those officers and the coercive custody normally incident to arrest, processing and detention.

On May 25, 1972, those arrested filed a petition in the Federal District Court in compliance with the procedures established by 28 U. S. C. § 1446 seeking transfer of the trial of charges against them to the District Court pursu-

[2] All of the petitioners were arrested on May 2, 1972; petitioners Albert Johnson, Eddie McBride, Charles Chiplin, and James Odell Dixon were arrested again on either May 13 or 14, and petitioner Johnson was arrested once again on May 21.

[3] The warrants were supported by the sworn affidavits of the Vicksburg chief of police and charged various persons among the total of 49 eventually arrested

"with the felonious intent on their part, and each of them to commit acts injurious to trade or commerce among the public and did wilfully, unlawfully, and feloniously conspire, combine confederate and agree among themselves and each of them with the other, and did enter into an unlawful conspiracy, plan and design among themselves, and each with the other, to unlawfully and feloniously bring about a boycott of merchants and businesses and pursuant of the said unlawful conspiracy did then and there promote, encourage and enforce acts injurious to trade or commerce among the public."

ant to 28 U. S. C. § 1443, which reads, in pertinent part,[4] as follows:

> "Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:
>
> "(1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof . . . ."

In their removal petition, it was alleged, *inter alia*, that those arrested were being prosecuted under several state conspiracy statutes[5] which were "on their face and as applied repugnant to the Constitution . . . ," and that

> "The charges against petitioners, their arrest, and subsequent prosecution on those charges have no basis in fact and have been effectuated solely and exclusively for the purpose and effect of depriving petitioners of their Federally protected rights, in-

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[4] Although the petitioners pleaded § 1443 generally, they made no suggestion that any among them was in the position to claim the protection of § 1443 (2) as construed by our decision in *City of Greenwood* v. *Peacock*, 384 U. S. 808, 815–824 (1966), nor do they press such a claim in this Court.

[5] At the time the removal petition was filed, the precise statutes under which prosecutions might eventually be brought was apparently unknown to petitioners and the other persons arrested. In their amended petition filed in the District Court, petitioners claimed that they were to be prosecuted under "[c]onspiracy statutes 2056 and all other conspiracy statutes as well as 2384.5 . . . ." The reference to "2056" is an apparent reference to § 2056 of the 1942 Code, now recodified as Miss. Code Ann. § 97–1–1 (1972). The reference to "2384.5" is an apparent reference to § 2384.5 of the 1942 Code, now recodified as Miss. Code Ann. § 97–23–83 (1972).

> cluding by force or threat of force, punishing, injuring, intimidating, and interferring, or attempting to punish, injure, intimidate, and interfere with petitioners, and the class of persons participating in the . . . boycott and demonstrations, for the exercise of their rights peacefully to protest discrimination and to conduct and publicize a boycott which seeks to remedy the denial of equal civil rights . . . which activities are protected by 18 U. S. C. § 245."

On December 29, 1972, after an evidentiary hearing was held by the District Court in which testimony was presented both by petitioners and the Vicksburg chief of police, who was one of the named respondents to the removal petition, the District Court remanded the prosecutions to the state courts. The Court of Appeals affirmed,[6] reasoning that § 245, as a criminal statute, "confers no rights whatsoever . . . ." 488 F. 2d 284, 287 (CA5 1974), and that, under this Court's decisions in *Georgia* v. *Rachel*, 384 U. S. 780 (1966), and *City of Greenwood* v. *Peacock*, 384 U. S. 808 (1966), a federal statute must "provide" for the equal rights of citizens before it can be invoked as a basis for removal of prosecutions under § 1443 (1). Rehearing and rehearing en banc, Fed. Rule App. Proc. 35,

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[6] After filing a notice of appeal, petitioners applied to the District Court for a stay of its mandate remanding the prosecutions to the state courts, which stay was denied. The record does not indicate that a stay was sought at that point from the Court of Appeals, the prosecutorial process proceeding in its normal fashion until March 1973, when the grand jury having cognizance over the charges "no billed" the charges against 43 of the persons having been previously arrested. App. 140. That same grand jury at the same time returned indictments against the six remaining persons, petitioners here; two of the petitioners were indicted for violation of Miss. Code Ann. § 97-23-83 (1972), and the other four with violation of Miss. Code Ann. § 87-23-85 (1972). Tr. of Oral Arg. 26.

were denied, five circuit judges dissenting in an opinion.[7] 491 F. 2d 94 (CA5 1974). We granted certiorari, 419 U. S. 893 (1974), and, for reasons stated below, affirm the judgment of the Court of Appeals.

II

Our most recent cases construing § 1443 (1) are the companion cases of *Georgia* v. *Rachel, supra,* and *City of Greenwood* v. *Peacock, supra.* Those cases established that a removal petition under 28 U. S. C. § 1443 (1) must satisfy a two-pronged test. First, it must appear that the right allegedly denied the removal petitioner arises under a federal law "providing for specific civil rights stated in terms of racial equality." *Georgia* v. *Rachel,* 384 U. S., at 792. Claims that prosecution and conviction will violate rights under constitutional or statutory provisions of general applicability or under statutes not protecting against racial discrimination, will not suffice. That a removal petitioner will be denied due process of law because the criminal law under which he is being prosecuted is allegedly vague or that the prosecution is assertedly a sham, corrupt or without evidentiary basis does not, standing alone, satisfy the requirements of § 1443 (1). *City of Greenwood* v. *Peacock,* 384 U. S., at 825.

Second, it must appear, in accordance with the provisions of § 1443 (1), that the removal petitioner is "denied or cannot enforce" the specified federal rights

[7] Shortly after the Court of Appeals denied a petition for rehearing en banc, 491 F. 2d 94 (CA5 1974), that court granted an application for a stay of its mandate to petitioners for purposes of their seeking a writ of certiorari in this Court, that stay being effective until disposition of the case by this Court. Since that time the prosecution of petitioners on the indictments handed down by the grand jury has not gone forward.

"in the courts of the State." This provision normally requires that the "denial be manifest in a formal expression of state law," *Georgia* v. *Rachel*, 384 U. S., at 803, such as a state legislative or constitutional provision, "rather than a denial first made manifest in the trial of the case." *Id.*, at 799. Except in the unusual case where "an equivalent basis could be shown for an equally firm prediction that the defendant would be 'denied or cannot enforce' the specified federal rights in a state court," *id.*, at 804, it was to be expected that the protection of federal constitutional or statutory rights could be effected in the pending state proceedings, civil or criminal. Under § 1443 (1),

> "the vindication of the defendant's federal rights is left to the state courts except in the rare situations where it can be clearly predicted by reason of the operation of a pervasive and explicit state or federal law that those rights will inevitably be denied by the very act of bringing the defendant to trial in the state court." *City of Greenwood* v. *Peacock*, 384 U. S., at 828.

In *Rachel*, the allegations of the petition for removal were held to satify both branches of the rule. The federal right claimed arose under §§ 201 and 203 (c) of the Civil Rights Act of 1964, 42 U. S. C. §§ 2000a (a) and 2000a (c). Section 201 forbade refusals of service in, or exclusions from, public accommodations on account of race or color; and § 203 (c) prohibited any "attempt to punish any person for exercising or attempting to exercise any right or privilege secured by § 201 . . . ." The removal petitions fairly alleged that the prosecutions sought to be removed from state court were brought and would be tried "solely as the result of peaceful attempts to obtain service at places of public accommodation."

384 U. S., at 793.[8] We concluded that if the allegations in the removal petition were true, the defendants by being prosecuted under a state criminal trespass law would be denied or could not enforce their rights in the courts of Georgia, since "the burden of having to defend the prosecutions is itself the denial of a right explicitly conferred by the Civil Rights Act of 1964." *Id.*, at 805.

In *Peacock*, on the contrary, the state court defendants petitioning for removal were being prosecuted for obstructing public streets, assault and battery and various other local crimes.[9] The federal rights allegedly being denied were said to arise under the Constitution as well as under 42 U. S. C. §§ 1971 and 1981, the former section guaranteeing the right to vote without discrimination on the grounds of race or color and forbidding interference therewith, and the latter guaranteeing all persons equal access to specified rights enjoyed by white persons.[10] The Court assumed that the claimed statu-

[8] We had earlier construed § 203 (c) as prohibiting "prosecution of any person for seeking service in a covered establishment, because of his race or color." *Hamm* v. *City of Rock Hill*, 379 U. S. 306, 311 (1964).

[9] "The several defendants were charged variously with assault, interfering with an officer in the performance of his duty, disturbing the peace, creating a disturbance in a public place, inciting to riot, parading without a permit, assault and battery by biting an officer, contributing to the delinquency of a minor, operating a motor vehicle with improper license tags, reckless driving, and profanity and use of vulgar language." 384 U. S., at 813 n. 5.

[10] 42 U. S. C. § 1971 reads, in pertinent part,

"(a) . . . .

"(1) All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State . . . shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any State . . . to the contrary notwithstanding."

tory rights were within those rights contemplated by § 1443 (1), but went on to hold that there had been no showing that petitioners would be denied or could not enforce their rights in the state courts. The removal petitions alleged "(1) that the defendants were arrested by state officers and charged with various offenses under state law because they were Negroes or because they were engaged in helping Negroes assert their rights under federal equal civil rights laws, and that they are completely innocent of the charges against them, or (2) that the defendants will be unable to obtain a fair trial in the state court." 384 U. S., at 826. The Court held, however, that it was not enough to support removal to allege that "federal equal civil rights have been illegally and corruptly denied by state administrative officials in advance of trial, that the charges against the defendant are false, or that the defendant is unable to obtain a fair trial in a particular state court." *Id.*, at 827. Petitioners could point to no federal law conferring on them the right to engage in the specific conduct with which they were charged; and there was no "federal statutory

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"(b) No person, whether acting under color of law or otherwise, shall intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose . . . ."

We take note of the similarity between the language of § 1971 (b) set out above and the comparable language of § 245 (b) as set out in n. 11, *infra*.

Title 42 U. S. C. § 1981 provides:

"All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other."

right that no State should even attempt to prosecute them for their conduct." *Id.*, at 826–827.

III

With our prior cases in mind, it is apparent, without further discussion, that removal under § 1443 (1) was not warranted here based solely on petitioners' allegations that the statutes underlying the charges against them were unconstitutional, that there was no basis in fact for those charges or that their arrest and prosecution otherwise denied them their constitutional rights. We are also convinced for the following reasons that §245,[11] on which petitioners principally rely, does not

[11] Section 245, in relevant part provides:

"(b) Whoever, whether or not acting under color of law, *by force or threat of force* willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with—

. . . . . .

"(2) any person because of his race, color, religion or national origin and because he is or has been—

. . . . . .

"(C) applying for or enjoying employment, or any prerequisite thereof, by any private employer

. . . . . .

"(4) any person because he is or has been, or in order to intimidate such person or any other person or class of persons from—

"(A) participating, without discrimination on account of race, color, religion or national origin, in any of the benefits or activities described in [subparagraph (2)(C)]; or

"(B) affording another person or class of persons opportunity or protection to so participate; or

"(5) any citizen because he is or has been, or in order to intimidate such citizen or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination on account of race, color, religion or national origin, in any of the benefits or activities described in [subparagraph 2 (C)], *or participating lawfully in speech or peaceful* assembly opposing any denial

furnish adequate basis for removal under § 1443 (1) of these state prosecutions to the federal court.

Whether or not § 245, a federal criminal statute, provides for "specific civil rights stated in terms of racial equality . . . ." *Georgia* v. *Rachel*, 384 U. S., at 792, it evinces no intention to interfere in any manner with state criminal prosecutions of those who seek to have their cases removed to the federal courts. On the contrary, § 245 (a)(1) itself expressly provides that

> "Nothing in this section shall be construed as indicating an intent on the part of Congress to prevent any State . . . from exercising jurisdiction over any offense over which it would have jurisdiction in the absence of this section . . . ." [12]

The Mississippi courts undoubtedly have jurisdiction over conspiracy and boycott cases brought under state law; and § 245 (a)(1) appears to disavow any intent to interrupt such state prosecutions, a conclusion that is also implicit in the operative provisions of that section. Section 245 (b) makes it a crime for any persons, by "force

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of the opportunity to so participate . . . shall be fined . . . ." (Emphasis added.)

This truncated quotation of § 245 merely focuses on that activity, enumerated in subparagraph (2)(C), which would appear to be most closely connected to both the activity in which some defendants were engaged when actually arrested and to which the state charges most closely relate. We recognize that the defendants' picketing during the several months relevant expressed their dissatisfaction with what they contended to be racial discrimination in areas other than private employment.

[12] Section 245 (a)(1) goes on to negative any intent by Congress to foreclose state prosecution of the acts forbidden by that section: "nor shall anything in this section be construed as depriving State and local law enforcement authorities of the responsibility for prosecuting acts that may be violations of this section and that are violations of State or local law."

or threat of force" to injure, intimidate or interfere with any individual engaged in specified activities. The provision on its face focuses on the use of force, and its legislative history confirms that its central purpose was to prevent and punish *violent* interferences with the exercise of specified rights and that it was not aimed at interrupting or frustrating the otherwise orderly processes of state law.

Section 245, which was Title I of the Civil Rights Act of 1968, was the antidote prescribed by Congress to deter and punish those who would forcibly suppress the free exercise of civil rights enumerated in that statute. The bill which eventually became Title I, H. R. 2516, was substantially identical to H. R. 14765, passed by the House as Title V of the Civil Rights Act of 1966.[13] Title I was enacted against a background of racial violence described in the Report of the bill that was adopted by the House:

> "The brutal crimes committed in recent years against Negroes exercising Federal rights and against white persons who have encouraged or aided Negroes seeking equality need no recital. Violence and threats of violence have been resorted to in order to punish or discourage Negroes from voting, from using places of public accommodation and public facilities, from attending desegregated schools, and from engaging in other activities protected by Federal law. Frequently the victim of the crime has recently engaged or is then engaging in the exercise of a Federal right. In other cases, the victim is a civil rights worker—white or Negro—who has encouraged others to assert these rights or engaged in peaceful assembly opposing their denial. In still

[13] The Proposed Civil Rights Act of 1966, while it passed the House, did not pass the Senate.

other cases Negroes, not known to have had anything to do with civil rights activities, have been killed or assaulted to discourage other Negroes from asserting their rights." H. R. Rep. No. 473, 90th Cong., 1st Sess., 3–4 (1967).[14]

The Senate Report likewise explained Title I as a measure "to meet the problem of violent interference, for racial or other discriminatory reasons, with a person's free exercise of civil rights." S. Rep. No. 721, 90th Cong., 1st Sess., 3 (1967). This concern with racially motivated acts of violence pervaded the Report, see *id.*, at 4, 5, 6, 7, 8, and 9. In the debate on the floor of the Senate, frequent references to the bill's being directed at crimes of racial violence were made,[15] the following being particularly relevant here:

"This new law would provide that when a law

[14] The Report adopted by the House in 1967 stated that "The bill is intended to strengthen the Government's capability to meet the problem of civil rights violence." H. R. Rep. No. 473, 90th Cong., 1st Sess., 3 (1967). The bulk of the Report simply adopted by reference certain language that had appeared in the "Additional Views" of Chairman Celler of the House Committee on the Judiciary that had been appended to the House Report of the Civil Rights Act of 1966, H. R. Rep. No. 1678, 89th Cong., 2d Sess. (1966) (pt. 2). The language quoted in the text is taken from those views of Chairman Celler as expressed in the earlier House Report and as adopted by the House in the subsequent Congress. Chairman Celler made abundantly clear in those views that the bill that became § 245 "is designed to meet the problem of present-day racial violence . . . ," H. R. Rep. No. 473, at 5, and he reiterated this view of the bill when it arrived on the House floor for consideration after finally passing the Senate in 1967:

"[the Senate version of the bill] reenacts the bill we passed, giving protection to civil rights workers who might be endeavoring to express their beliefs in various parts of the country, and the provisions therein would protect them against violence." 114 Cong. Rec. 6490 (1968). See *id.*, at 9559.

[15] See 114 Cong. Rec. 318, 319, 320, 333, 335, 399, 535, 538, 913,

> enforcement officer totally abandons his duty in order to violently intimidate individuals seeking lawfully to exercise certain enumerated Federal rights, he will be punished like any other citizen.
>
> ". . . So long as it appears that an officer reasonably believed he was doing his duty, that is, that the arrest took place because of a perceived violation of a then-valid law, no case of knowing interference with civil rights could be made out against him." 114 Cong. Rec. 2268 (1968).

Viewed in this context, it seems quite evident that a state prosecution, proceeding as it does in a court of law, cannot be characterized as an application of "force or the threat of force" within the meaning of § 245. That section furnishes federal protection against violence in certain circumstances. But whatever "rights" it may confer, none of them is denied by a state criminal prosecution for conspiracy or boycott. Here, as in *Peacock*, there is no "federal statutory right that no State should even attempt to prosecute them for their conduct." 386 U. S. C., at 826–827.[16]

928, 1391, 1392 (1968). A Department of Justice witness testifying before a Senate subcommittee in support of Title I, stated that it "would afford the Federal Government an effective means of deterring and punishing forcible interference with the exercise of Federal rights," and that "[t]he mere fact that a policeman who is performing his duty in good faith uses force does not bring him under the act at all." Hearings on the Proposed Civil Rights Act of 1967, before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, at 82, 355 (1967). Those hearings, like the Senate Report and the floor debate in the Senate, are replete with numerous references to the use of violence to deter the exercise of federal rights. See *id.*, at 61, 81, 210, 211, 212, 222, 312, 322, 325, 349.

[16] The three Courts of Appeals faced with the issue now before us are in accord with our decision. *New York* v. *Horelick*, 424 F. 2d 697, 703 (CA2), cert. denied, 398 U. S. 939 (1970); *Hill* v. *Pennsyl-*

IV

We think further observations are in order. We stated in *City of Greenwood* v. *Peacock* that

> "if changes are to be made in the long-settled interpretation of the provisions of this century-old removal statute, it is for Congress and not for this Court to make them. Fully aware of the established meaning the removal statute had been given by a consistent series of decisions in this Court, Congress in 1964 declined to act on proposals to amend the law. All that Congress did was to make remand orders appealable, and thus invite a contemporary judicial consideration of the meaning of the unchanged provisions of 28 U. S. C. § 1443." 384 U. S., at 834–835.

When we decided that case, there had been introduced in the Congress no fewer than 11 bills which, if enacted, would have enlarged in one way or another the right of removal in civil rights cases. *Id.*, at 833 n. 33. None of those bills was reported from the cognizant committee of Congress; none has been reported in the intervening years; and the parties have informed us of no comparable bill under active consideration in the present Congress. The absence of any evidence or legislative history indicating that Congress intended to accomplish in § 245 what it has failed or refused to do directly through amendment to § 1443 necessitates our considered rejection of the right of removal in this case. Also, as we noted in *City of Greenwood*, there are varied avenues of relief open to these defendants for vindication of any of their federal rights that may have been or will be violated, 384 U. S.,

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vania, 439 F. 2d 1016, 1022 (CA3), cert. denied, 404 U. S. 985 (1971) (alternate holding); *Williams* v. *Tri-County Community Center*, 452 F. 2d 221, 223 (CA5 1971) (*quo warranto* proceeding).

at 828–830; and, indeed, it appears from the record in this case that at least one such avenue was pursued early on by them and continues to be pursued.[17]

Affirmed.

MR. JUSTICE DOUGLAS took no part in the consideration or decision of this case.

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[17] Brief for Petitioners 19 n. 9:

"Simultaneously [with the filing of the removal petition sub judice], the petitioners also filed a complaint pursuant to 42 U. S. C. § 1983 seeking injunctive relief against the arrests and prosecutions in a companion action, *Concerned Citizens of Vicksburg* v. *Sills*, Civil No. 72W-18 (N) (S. D. Miss. filed May 24, 1972), but the District Court denied temporary injunctive relief which would have held the prosecutions in status quo pending a final hearing on the merits (Order of May 26, 1972). A final hearing in that action has not been held, and is not part of this appeal."

SUPREME COURT OF THE UNITED STATES

No. 73–1531

Albert Johnson et al., Petitioners, *v.* State of Mississippi et al. } On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[May 12, 1975]

MR. JUSTICE MARSHALL, with whom MR. JUSTICE BRENNAN joins, dissenting.

I believe the dissenters in *City of Greenwood* v. *Peacock*, 384 U. S. 808 (1966), correctly construed the civil rights removal statute, 28 U. S. C. § 1443. See *New York* v. *Galamison*, 342 F. 2d 255, 275 (CA2), cert. denied, 380 U. S. 977 (1965) (MARSHALL, J., dissenting). On that broader view of the statute, removal would plainly be proper here, and if the Federal District Court determined that the state proceedings were being used to deny federally protected rights, it would be required to dismiss the prosecution. See *City of Greenwood* v. *Peacock*, *supra*, 384 U. S., at 840–848 (DOUGLAS, J., dissenting). Even under *Peacock* and its companion case, *Georgia* v. *Rachel*, 384 U. S. 780 (1966), however, I think that removal should have been available on the particular facts of this case.

As the Court today observes, *Rachel* and *Peacock* imposed sharp limitations on the scope of the removal statute. The statute was held to permit removal only in the rare case in which (1) the federal right at issue stemmed from a law providing expressly for equal civil rights; (2) the conduct with which the removal petitioners were charged was arguably protected by the federal law in question; and (3) the federal law granted the further right not only to engage in the conduct in

question, but to be free from arrest and prosecution by state officials for that conduct. Focusing on the third requirement, the Court today holds that Title I of the 1968 Civil Rights Act, 18 U. S. C. § 245, does not provide a right to be free from arrest and prosecution for engaging in specific federally protected conduct. In my view, the three requirements from *Peacock* were satisfied to the extent necessary to call for a full hearing on the removal petition, and I would therefore vacate the judgment of the Court of Appeals and remand for further proceedings.[1]

I

The Court of Appeals based its ruling on the first of the three requirements, holding that § 245 was not a "law providing for equal civil rights." The court reasoned that the statute failed to meet this requirement because it did not "provide" any substantive rights but merely supplied a criminal sanction for the violation of rights that had been elsewhere created. This misses the point.[2]

[1] Although the District Court initially held a hearing on the removal petition and made various factual findings adverse to the petitioners, the Court of Appeals disposed of the case without reviewing the findings of the District Court. I would therefore remand the case to the Court of Appeals to review the findings relevant to the availability of removal and to order further proceedings if necessary.

[2] The Court of Appeals acknowledged that § 245 met the requirement that the statute under which removal is claimed be a law dealing with "specific civil rights stated in terms of racial equality," *Georgia* v. *Rachel*, 384 U. S. 780, 792 (1966). See *Johnson* v. *Mississippi*, 488 F. 2d 284, 286 (CA5 1974). The statute was plainly addressed to problems associated with the exercise and advocacy of minority rights. Like the 1964 Civil Rights Act, and unlike the more general constitutional and statutory provisions that were rejected as bases for removal in *Rachel* and *Peacock*, § 245 (b)(2) refers throughout to conduct premised on racial discrimination.

Even if § 245 is regarded solely as creating criminal penalties for interference with previously established civil rights, it certainly "provid[es] for" those rights by facilitating their exercise. Congress plainly intended § 245 in part to render certain rights meaningful, even though the rights themselves had in some instances been created in prior legislation. See S. Rep. No. 721, 90th Cong., 2d Sess., 4–6 (1967); H. R. Rep. No. 473, 90th Cong., 1st Sess., 5–7 (1967). If Congress had provided private legal or equitable remedies for the vindication of pre-existing rights, such a statute would certainly be deemed one "providing for" equal civil rights. The fact that Congress has invoked the criminal sanction to protect and enforce those rights rather than relying on private remedies should make no difference.

In any event, § 245 does more than enforce pre-existing rights: in several respects it creates rights that had no previous statutory recognition. First, the statute protects not only those participating in the exercise of equal civil rights, but also those "encouraging other persons to participate" and those "participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate." § 245 (b)(5). See S. Rep. No. 721, 90th Cong., 2d Sess., 4 (1967). Second, because it is based on § 5 of the Fourteenth Amendment rather than the Commerce Clause, § 245 goes beyond the specific protections of prior civil rights laws in various particulars. As the House Report noted:

> "the scope of the activities described in section [245 (b)] is not limited to the scope of the 'rights' created by other Federal laws outlawing discrimination with respect to those activities. Accordingly, in appropriate cases, . . . the bill would reach forcible interference with employment, regardless of the size and regardless of the public or private

> character of the employer; with service in all of the described places of public accommodation, whether or not they happen to fall within the scope of the 1964 Civil Rights Act; and with common carrier transportation whether interstate or intrastate." H. R. Rep. No. 473, 90th Cong., 1st Sess., 5 (1967).

Finally, the statute goes beyond protecting against racially motivated misconduct by state officials and those acting in concert with them. It reaches racially motivated conduct by private individuals as well, thus extending both a right against, and a remedy for, certain private misconduct. The inclusion of private individuals within the reach of § 245 was a topic of intense dispute during the congressional debates over the statute. Both the advocates and opponents of the statute recognized that § 245 would criminalize a whole new sphere of conduct and thus significantly expand the scope of federal statutory protection for civil rights. See S. Rep. No. 721, *supra*, at 7–8, 21–26; 113 Cong. Rec. 22763–22764 (1967); 114 Cong. Rec. 319, 389–391, 539–544 (1968). In view of the statute's broad remedial purposes and effects, only on the most grudging reading can it be said not to "provid[e] for equal civil rights."

II

Although neither the Court of Appeals nor this Court have discussed the second requirement for § 1443 removal, I believe that under *Rachel* and *Peacock* a sufficient showing has been made to require further proceedings below. The Court in *Peacock* established that where the state criminal charge includes allegations of conduct clearly unprotected by federal law, removal is not available. In that case, the state charges included obstruction of the streets, assault, and interference with a police officer—all forms of conduct not even arguably protected

under federal law. See *Peacock, supra,* 384 U. S., at 826–827.[3]

In *Rachel,* by contrast, the Court observed that the defendants had been charged only with violating the state criminal trespass statute, which required that a person leave a place of business when requested to do so by the owner. The defendants alleged in their removal petitions that they had remained on the premises of the privately owned restaurants where they were arrested in the course of seeking service to which they were entitled by the 1964 Civil Rights Act. Thus none of the conduct that the defendants were allegedly engaged in fell plainly outside the protection of federal law, as was the case in *Peacock.* Accordingly, the District Court was instructed to hold a hearing to determine whether the defendants were ordered to leave the restaurant facilities solely for racial reasons, and whether the conduct was in fact within the protection of federal law—in that case by determining whether the restaurants in question were within the coverage of the Civil Rights Act. 384 U. S., at 805 and n. 31.

On this point, the instant case is controlled by *Rachel* rather than *Peacock.* The arrest affidavits charged merely that the petitioners had conspired to promote a boycott of merchants and businessmen and that they had

[3] The Court rejected the argument made in dissent that it was the allegations in the removal petition that should be looked to in determining whether the conduct was arguably protected by federal law, not the charges filed in the state proceeding. As has been suggested elsewhere, relying on the charges to determine whether the conduct is protected would immunize from removal any case in which the state charges included allegations of conduct plainly outside the scope of federal protection. See Hart & Wechsler, The Federal Courts and the Federal System 1228 (2d ed. 1973); *Perkins* v. *Mississippi,* 455 F. 2d 7, 11, 31–33 (CA5 1972) (Brown, C. J., dissenting); Note, Civil Rights Removal after *Rachel* v. *Peacock:* A Limited Federal Remedy, 121 U. Pa. L. Rev. 351, 368 (1972).

engaged in and promoted acts "injurious to trade or commerce among the public." App. 3–17. In their removal papers, the petitioners alleged that the conduct underlying their arrests on these charges was wholly within the protection of federal law.[4] There is nothing in the arrest affidavits or the statute under which the petitioners were charged that rebuts this claim. The line between *Rachel* and *Peacock* is that between "prosecution in which the conduct necessary to constitute the state offense is specifically protected by the federal equal rights statute under the circumstances alleged by the petitioner, and prosecution where the only grounds for removal are that the charge is false and motivated by a desire to discourage the petitioner from exercising or to penalize him for having exercised a federal right." *New York* v. *Davis*, 411 F. 2d 750, 754 (CA2), cert. denied, 396 U. S. 856 (1969). Like *Rachel*, this case falls into the former category. Accordingly, the courts below should determine whether the petitioners' conduct was in fact protected. If it was, the prosecutions should be dismissed.[5]

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[4] Specifically, the petitioners alleged that in order to protest various forms of private and public racial discrimination they "began to peacefully and lawfully picket the business establishment of [offending] merchants in Vicksburg, Mississippi, and began to urge the citizens of Vicksburg to boycott these establishments. All of this picketing by the petitioners and other members of their class was done in a lawful and peaceful manner without infringing upon the rights of any other citizen of Vicksburg . . . ." App. 22.

[5] The respondents contend in their brief that the petitioners were arrested for acts ranging from engaging in a secondary boycott to physically interfering with and intimidating a customer who was trading with a white merchant. The petitioners respond that both the arrest affidavits and the testimony at the remand hearing before the District Court was to the effect that they were all arrested pursuant to the general state conspiracy statute, and specifically for entering into "a conspiracy harmful to trade or commerce." App. 30. Since the remand order was the only judgment before the Court of Appeals, it is not clear what effect subsequent actions taken by

III

Finally, the *Rachel-Peacock* test requires that the federal law invoked by the petitioners must do more than merely provide a defense to conviction: it must immunize them from arrest and prosecution for the conduct in question. In *Rachel*, the Court held that this test was met, since § 203 of the 1964 Civil Rights Act provided that "No persons shall . . . (c) punish or attempt to punish any person for exercising any right or privilege secured by section 201 or 202." The rights protected by § 201 included the right to "full and equal enjoyment of the facilities of any place of public accommodation without discrimination on the ground of race." Viewing this language in light of a subsequent construction in *Hamm* v. *City of Rock Hill*, 379 U. S. 306, 311 (1964), the Court in *Rachel* concluded that if the facts in the removal petition were found to be true, the defendants would not only be immune from conviction under the Georgia trespass statute, but they would have a right under the Civil Rights Act of 1964 "not even to be brought to trial on these charges in the Georgia courts." 384 U. S., at 794.

The Court today distinguishes the language of 18 U. S. C. § 245 from that of 42 U. S. C. § 203 (c), holding that the former does not grant the same immunity from prosecution that was implied in the latter. To me, the language of the two statutes is not sufficiently different to support such a distinction. While the statute in *Rachel* provided that no person should "punish or attempt to punish" a person engaged in conduct protected under the Act, the statute at issue here provides sanc-

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state officials would have on the removal suit on appeal. In any event, because of the continuing dispute over what state statute was used as the basis for the charges in state court, and correspondingly, what conduct was alleged, the question whether the conduct was protected under federal law is one that should be left to the courts below to determine on remand.

tions against anyone who, "whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with" any person who is engaged in protected civil rights activity or is "lawfully aiding or encouraging other persons to participate" in various protected activities. The use of force or the threat of force to intimidate or interfere with persons engaged in protected activity fairly describes an "attempt to punish the same persons, and it would seem plainly to include pretextual arrests such as are alleged to have occurred in this case.[6]

Besides the difference in language between § 203 (c) and § 245, the Court points to two other factors that it contends provide a further basis for denying removal here. I do not find either to be dispositive.

First, the Court relies on § 245 (a)(1), in which Congress emphasized that § 245 was not intended to prevent

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[6] The Court notes "the similarity between the language of § 1971 (b) . . . and the comparable language of § 245 (b)," *ante*, at 8, n. 10. The statutes do, indeed, have similar language, but the conduct protected under § 1971 (b) is *voting*, and there was no allegation in *Peacock* that the defendants were engaged in voting. It was unnecessary for the Court to determine whether § 1971 (b), or a statute with similar prohibitory language, would provide a means for removal because (1) the conduct with which the defendants were charged was not protected under *any* federal law; and (2) their conduct, as alleged in their own removal petition, was not within the scope of § 1971 (b).

Another statute, 42 U. S. C. § 1973i (b), which was enacted after the removal in *Peacock*, protected those urging others to exercise their rights to vote, and thus would have reached the conduct in which the *Peacock* defendants claimed to have been engaged. See *Whatley* v. *City of Vidalia*, 399 F. 2d 521 (CA5 1968). Even under that statute, however, removal would not have been available in *Peacock* because the conduct with which the defendants were charged in the state court proceeding was unprotected by that or any other federal law.

"any State . . . from exercising jurisdiction over any offense over which it would have jurisdiction in the absence of this section . . . ." The Court argues that this "nonpreemption" provision indicates that § 245 "appears to disavow any intent to interrupt . . . state prosecutions [for offenses such as boycotting and conspiracy]." *Ante*, at 10. I cannot agree that § 245 (a)(1) means to do that much. The legislative history of this subsection indicates that it was intended to avoid the risk that § 245 would be read to bar or interfere with state prosecutions of those who violated § 245 as well as parallel state laws. The fear was that § 245, because of its potential breadth, might appear to give pre-emptive authority to federal law officers in prosecuting a broad spectrum of offenses that were traditionally subject to local criminal jurisdiction.[7] There is no indication in the legislative history

[7] Section 245 (a)(1) had its origin in an amendment offered to the House bill by Representative Whitener. In his words, the amendment was intended to ensure that:

"nothing contained in this act shall indicate an intent on the part of Congress to occupy the field in which any provision of the act operates to the exclusion of state laws on the same subject matter, nor shall any provision of this act be construed as invalidating any provision of State law unless such provision is inconsistent with any of the purposes of this act or any provision thereof. . . . Without the amendment, there would be an unwarranted deprivation of criminal jurisdiction now exercised by the several States in most of the fields of criminal law touched by this bill." 113 Cong. Rec. 22745 (1967).

See also 113 Cong. Rec. 22683 (1967) (Mr. Whitener).

In the Senate, the final language of § 245 (a)(1) was adopted as part of Senator Dirksen's amendment to the bill. The explanation of the provision given to the Senate was as follows:

"Section (a) of the bill expresses the intent of Congress not to supersede state and local law enforcement except where required by the public interest in order to obtain substantial justice. In all cases state and local law would continue to apply, and would not be preempted by federal law. However, in those situations when

that § 245 (a)(1) was intended to defeat removal of state prosecutions by those protected under the Act, nor is there any suggestion that it was meant to reduce the protection for the beneficiaries of § 245 in any other way.

Second, the Court relies heavily on the main purpose of § 245: to penalize violent interference with the exercise of specific rights. Certainly, violent interference with the exercise of civil rights was a primary target of the statute. But curbing private violence was not the drafters' sole aim. The Act was intended to reach law enforcement officers as well as private citizens, and the process of arrest and prosecution in state courts is precisely the means by which state officials, acting under color of state law, can most plausibly exert force or the threat of force to interfere with federally protected rights. See *Perkins* v. *Mississippi*, 455 F. 2d 7, 11, 39–41 (CA5 1972) (Brown, C. J., dissenting).

The Court is correct, of course, in noting that Congress did not expressly indicate that § 245 should be available as a means of removing prosecutions to federal courts. But the Court in *Rachel* did not require any showing that Congress had specifically intended the statute in issue to be used as a vehicle for removal. All that was necessary was that the statute protect against the institution of criminal actions against those engaged in protected federal rights, and in my view that standard is met here.[8]

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state and local law enforcement is unable or unwilling to prosecute effectively, federal prosecution may be undertaken. To assure that decisions relating to exercise of this dual jurisdiction are carefully made, the bill requires advance certification of prosecutorial authority by the Attorney General or the Deputy Attorney General." 114 Cong. Rec. 4907 (1967).

[8] In its analysis, the Court relies in part on a statement by Senator Kennedy to the effect that a state law enforcement officer reasonably believing that he is doing his duty, would not violate § 245, which requires at least knowing interference with civil rights. The

IV

If the facts of this case are as alleged in the removal petition, then the protest effort of the petitioners and their group, although well within the protection of federal law, has been muffled, if not altogether stilled, by discriminatory and cynical misuse of the state criminal process. The Court makes reference to the possibility of federal injunctive relief, which would be available in this case if the petitioners can show that the arrests and prosecutions were instituted in bad faith or for the purpose of harassment. See *Dombrowski* v. *Pfister*, 380 U. S. 479, 482, 490 (1965); *Younger* v. *Harris*, 401 U. S. 37, 47–50 (1971). I only hope that the recent instances in which this Court has emphasized the values of comity and federalism in restricting the issuance of federal injunctions against state criminal and quasi-criminal proceedings will not mislead the district courts into forgetting that at times these values must give way to the need to protect federal rights from being irremediably trampled. The possibility that the petitioners might be vindicated in state court criminal actions or through subsequent habeas corpus relief will do little to restore what has been lost: the right to engage in legitimate, if unpopular, protest without being subjected to the inconvenience, the expense, and the ignominy of arrest and prosecution. If the federal courts abandon persons like the petitioners in this case without a fair hearing on the merits of their claims, then in my view comity will have been bought at too great a cost.

I respectfully dissent.

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interference alleged in the removal petition, however, is intentional interference, which would fall within the literal terms of the statute.